113-747

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 1090.

THE UNITED STATES, APPELLANT,

vs.

CHARLES L. STEEVER.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 16, 1884.

SUPREME COURT OF THE UNITED STATES.

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vs.

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1 I. *Petition.—Filed September* 5, 1882.—*J. R.*

In the United States Court of Claims. December term, 1881.

CHARLES L. STEEVER
vs.
THE UNITED STATES. } No. 13083.

To the honorable the judges of the United States Court of Claims:

The petition of Charles L. Steever respectfully shows to your honorable court that he resides in the city of Washington, in the District of Columbia, and is a citizen of the United States; that he has at all times borne true allegiance to the Government thereof, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

In the month of October, A. D. 1864, your petitioner, who was then serving in the United States Navy as an acting third assistant engineer on the United States ship Otsego, attached to the naval force in the "District of the Sounds," North Carolina, and forming a part of the North Atlantic blockading squadron, under the command of Rear-Admiral David
2 D. Porter, responded to the call for additional men to serve on the United States torpedo launch, known as Picket Boat No. 1. He was doing duty thereon as an engineer on the 27th day of October, 1864, when the said Picket Boat No. 1, under the command of Lieutenant William B. Cushing, captured the rebel ram Albemarle, in the Roanoke River, at Plymouth, North Carolina.

Subsequently to the capture and condemnation of said ram Albemarle, to wit, on the 21st day of August, 1865, the district court of the United States for the District of Columbia, made a decree ordering the distribution of the sum of seventy-seven thousand two hundred and ninety-eight dollars and seventy cents ($77,298.70), as prize money, among the captors of said ram, according to law. And again, on the 11th day of February, 1873, the same court, under authority of acts of Congress approved April 1, 1872, and January 3, 1873, made a further decree, in the same prize cause, ordering the distribution among the same captors of the additional sum of one hundred and ninety-five thousand eight hundred and thirty-six dollars and thirty-nine cents ($195,836.39), making in all the sum of two hundred and seventy-three thousand one hundred and thirty-five dollars and nine cents ($273,135.09). The shares provided by the prize law in force at the time of the capture, for the officers of the fleet under whom the capturing vessel was serving, were ordered by these decrees to be deducted from this sum, leaving for distribution among the commander and crew of said Picket Boat No. 1, or torpedo launch, the net sum of two hundred and fifty-one thousand two hundred and eighty-four dollars and twenty-nine cents ($251,284.29). The said decrees are hereto appended as Exhibits A and B, and made part hereof.

The said capturing vessel was commanded by Lieutenant William B. Cushing of the United States Navy, and the names, rank, and yearly rate

of pay of all the other persons who were doing duty on board thereof at the time of capture are as follows, viz:

3	Francis H. Swan, acting assistant paymaster	$1,300
	Charles L. Steever, acting 3d assistant engineer	1,000
	William Stotesbury, acting 3d assistant engineer	1,000
	William L. Howarth, acting master's mate	480
	John Woodman, acting master's mate	480
	Thomas S. Gay, acting master's mate	480
	Samuel Higgins, first class fireman	360
	Richard Hamilton, coal heaver	240
	Edward J. Houghton, ordinary seaman	192
	Bernard Harley, ordinary seaman	192
	Daniel G. George (known as William Smith the first), ordinary seaman	192
	Robert H. King, landsman	168
	Henry Wilkes, landsman	168
	Lorenzo Deming, landsman	168
	Total annual pay	$6,420

After deducting from said two hundred and fifty-one thousand two hundred eighty-four dollars and twenty-nine cents ($251,284.29), the one-tenth thereof as the share of the commanding officer of the capturing vessel, under the provisions of the tenth section of the prize act of June 30, 1864, your petitioner became entitled to thirty-five thousand two hundred and twenty-six dollars and seventy-seven cents ($35,226.77) as his lawful share of said prize money, according to his rate of pay; but has received in fact only the sum of twenty-three thousand nine hundred and twenty-five dollars ($23,925); and there remains the sum of eleven thousand three hundred and one dollars and seventy-seven cents ($11,301.77), exclusive of all just credits and set-offs justly due to him by the United States. He has not assigned his claim to this sum, in whole or part, to any person whomsoever.

Your petitioner has applied to the Secretary of the Navy and accounting officers of the Treasury Department for a correction of the
4 error made to his great injury in the distribution of said prize money, but without success; and Congress, by its act approved August 8, 1882, hereto appended and marked Exhibit C, has referred his claim to this honorable court.

Wherefore petitioner prays your honorable court that he may have judgment for said sum of eleven thousand three hundred and one dollars and seventy-seven cents ($11,301.77), and such other relief as equity and good conscience may require.

And he will ever pray, &c.

JAMES FULLERTON,
Proctor for Claimant.

DISTRICT OF COLUMBIA,
City of Washington, ss:

Personally came before me, a notary public in and for the District aforesaid, Charles L. Steever, who, being duly sworn, says that he is the peti-

tioner named in the foregoing petition; that no assignment of the claim therein stated has been made, except as in said petition stated; that the amount claimed is justly due to the petitioner from the United States after allowing all just credits and off-sets, and that he believes the facts stated in the said petition to be true.

CHAS. L. STEEVER.

Subscribed and sworn before me this thirty-first day of August, A. D. 1882.

[SEAL.] SAM'L C. MILLS,
Notary Public.

5 EXHIBIT A.

Decree of August, 1865.

District court of the United States for the District of Columbia.

At the United States court rooms, in the city of Washington, on the 21st day of August, A. D. 1865. Present, Andrew Wylie, justice.

THE UNITED STATES *vs.* THE REBEL RAM ALBEMARLE, her tackle, &c. } No. 146. In prize. Decree of distribution.

A final decree of condemnation of the rebel ram Albemarle having been duly rendered herein by the court, and it appearing by the papers filed in court under the seal of the Navy Department that the said rebel ram having been taken and appropriated by the Government of the United States for the use of the United States, was appraised at the sum and value of ($79,944) seventy-nine thousand nine hundred and forty-four dollars.

And it further appearing that the aggregate sum of the costs and disbursements herein, together with the allowance made to the counsel for captors, under a special stipulation filed with the papers in the case, and as the adjustment of the same, pursuant to the act of June 30, 1864, on file in the office of the clerk, is two thousand six hundred and forty-five dollars and thirty cents ($2,645.30), and that the net amount for distribution on the basis of the said adjustment is, therefore, the sum of seventy-seven thousand two hundred and ninety-eight dollars and seventy cents ($77,298.70).

It is now ordered and decreed, on the motion of the district attorney, the counsel for the captors assenting to the same, that the aforesaid net amount be deposited in the Treasury of the United States, and be distributed according to law.

And it further appearing that the papers filed in said cause under the seal of the Navy Department, and the affidavit in behalf of the captors, show what public ship is entitled to share in the said prize, and whether the said prize was of superior, equal, or inferior force to the vessel
6 making the capture, and there being no conflicting claim: Now, therefore, it is adjudged and decreed that the prize was of superior

force to the vessel making the capture, and that the whole of the residue of said valuation be paid to the captors, as follows:

One-twentieth of said residue to the officer commanding the North Atlantic blockading squadron at the time of said capture; one-hundredth part of said residue to the fleet-captain of said North Atlantic blockading squadron (*three-twentieths of said residue to the officer commanding the torpedo launch capturing said prize*),* and the remainder distributed to the other persons doing duty on board said torpedo launch in proportion to their respective rates of pay in the service.

By order of the court.

(Signed) A. W.

EXHIBIT B.

Decree of February 11, 1873.

In the district court of the United States for the District of Columbia.

THE UNITED STATES
vs.
THE REBEL RAM ALBEMARLE. } Prize.

This cause coming on to be heard and for final decree, the district attorney of the United States for the District of Columbia appeared for the United States, and the captors were represented by their proctors, whereupon the proceedings were read and considered, and it appearing to the court that on the first day of April, A. D. 1872, an act of Congress was approved by the President requiring the court to take up and re-examine this cause, that the captors might obtain an appraisal such as is required by the prize-laws of Congress, and that on the third day of June, A. D. 1872, Commander William B. Cushing, of the United States Navy,
7 who commanded the expedition on board the torpedo launch which captured the said prize, filed in this court his petition on behalf of himself and the other captors, praying the order of this court for such appraisement; whereupon a board of appraisers was appointed to make such appraisement, and notice was directed to be given, and was given, by public advertisement of these proceedings to all persons claiming to be interested therein, for the term of three weeks, and after the expiration thereof the said board returned their appraisement valuing the said prize at the sum of two hundred and eighty-two thousand eight hundred and fifty-six dollars and ninety cents ($282,856.90), to which report no exceptions were filed, either by the United States or the captors, and the same was, on the 9th day of July, A. D. 1872, ratified and confirmed; and that thereafter, on the eighth day of January, 1873, Congress made an appropriation to enable the Secretary of the Navy to pay the captors of the said prize the sum of two hundred and two thousand nine hundred and twelve dollars and ninety cents, being the difference between the value of the said vessel as appraised under the order of this court and the amount heretofore deposited by the Secretary of the Navy with the assistant treasurer of the United States as part of the value of said prize, which sum of two hundred and two thou-

* These words in *italics* were struck out of the original draft of the decree, and are omitted in the enrollment.

sand nine hundred and twelve dollars and ninety cents ($202,912.90) has been deposited with the assistant treasurer of the United States, at Washington, subject to the order of this court.

And it being further seen that on the 12th day of July, A. D. 1872, Commander Wm. H. Macomb, U. S. Navy, filed his petition in this court, claiming to share in the prize as commander of a division of the North Atlantic blockading squadron, and has offered evidence to prove his claim as commanding such division; and it being further seen that on the 5th day of August, 1872, William Peterkin, and on the 9th day of January, A. D. 1873, Wilson P. Burlingame filed their petitions, by leave of the court, claiming a share in the prize, as having been part of the crew of a cutter which accompanied the torpedo launch on the expedition to capture the prize, but was ordered back before the attack was made, but neither of said petitioners having offered any evidence to support their claim, while on the other hand the persons doing duty on the torpedo launch have offered evidence to prove that the said cutter was not within signal
8 distance of the torpedo launch at the time of the capture, nor under circumstances, nor in a condition to render any aid; and at this hearing no objection is made on the part of said petitioners Burlingame and Peterkin.

Now, therefore, it is, this eleventh day of February, A. D. 1873, ordered, adjudged, and decreed, that of the said amount of two hundred and two thousand nine hundred and twelve dollars and ninety cents ($202,912.90), there be paid into the hands of the marshal of the District of Columbia, the sum of seven thousand and seventy-six dollars and fifty-one cents ($7,076.51), to be by him paid according to the bill of costs taxed and allowed by this court, and that the residue of said sum so as aforesaid appropriated, to wit, the sum of one hundred and ninety-five thousand eight hundred and thirty-six dollars and thirty-nine cents ($195,836.39), be deposited in the Treasury of the United States, to be distributed as follows, that is to say, one-twentieth part thereof to the officer commanding the North Atlantic blockading squadron, one-hundredth part thereof to the fleet captain of the said blockading squadron; one-fiftieth part thereof to the officer commanding that division of the said squadron called the Division of the Sounds of North Carolina, together with the further sum of fifteen hundred and forty-five dollars and ninety cents ($1,545.90), being one fiftieth part of the sum heretofore decreed by this court to be distributed; and that the remainder be distributed to the persons doing duty on the torpedo launch in proportion to their respective rates of pay in the service.

(Signed) D. C. HUMPHREYS,
Justice.

Filed February 11, 1873.

EXHIBIT C.

[*Private.—No.* 232.]

AN ACT to refer the claims of the captors of the ram Albermarle, to the Court of Claims.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the claims of the captors of

the ram Albermarle, which was captured and destroyed October
9 twenty-seventh, eighteen hundred and sixty-four, be, and the same the same hereby are, referred to the Court of Claims, with jurisdiction and authority to hear and determine the same, and all defenses thereto which are or may be open to the United States, and to render judgment thereon, with the right of appeal as in other cases; and if said court shall find that either or any of said captors has not or have not received his or their full and just share of the prize money awarded for the capture of said ram "Albemarle," according to the proportions provided in the prize laws in force at the time of said capture, and that he or they are entitled to claim and recover the same, the said court shall render judgment in favor of such captor or captors, respectively, or his or their legal representatives, for such sum or sums as shall in addition to the amount already paid make the share of such captor or captors, respectively, equal to his or their respective share or shares of said prize money, according to the provisions of the prize laws in force at the time of said capture: *Provided*, That no suit shall be brought under the provisions of this act after one year from the date of its passage.

SEC. 2. That any judgment rendered by the Court of Claims under the provisions of the first section of this act shall be paid by the Secretary of the Treasury out of any money in the Treasury applicable to the payment of prize to captors; and if there shall not be money applicable for that purpose in the Treasury, or sufficient therefor, then the same, or any part thereof for which prize money in the Treasury is insufficient, shall be paid out of any money in the Treasury not otherwise appropriated.

Approved, August 8, 1882.

EXHIBIT D.—*Distribution of the prize money.*

Rate of pay adopted.	True rate.		Distribution made. 1865.	1873.	Total.	True shares.	Due.	Excess.
		Amount of prize money	$79,944 00	$202,912 90	$282,856 90			
		Costs in prize court	2,645 30	7,076 51	9,721 81			
		Net amount for distribution	77,298 70	195,836 39	273,135 09	$273,135 09		
		FLEET OFFICERS.						
1/20	1/20	Admiral D. D. Porter	3,864 93	9,791 82	13,656 75			
1/100	1/100	Commander K. R. Breese	772 98	1,958 37	2,731 35			
1/50	1/50	Commander W. H. Macomb		5,462 70	5,462 70			
		Deduct for fleet officers	4,637 91	17,212 89	21,850 80	21,850 80		
		Net for vessel and crew	72,660 79	178,623 50	251,284 29	251,284 29		
		COMMANDER AND CREW.						
$1875	1/10	Lieutenant Wm. B. Cushing, commander	15,112 50					
2343	1/10	do. as lieut. commander	2,840 08	38,103 69	56,056 27	25,128 43		$30,927 84
1200	480	Master's Mate W. L. Howarth, as ensign	9,194 66					
1500	.....	do. do. as master	2,298 67	24,394 17	35,887 50	16,908 85		18,978 65
480	480	Master's Mate Thos. S. Gay	3,868 81					
1200	.....	do. do. as ensign	.....	24,841 19	28,710 00	16,908 85		11,801 15
1360	1300	Paymaster F. H. Swan	10,477 97	20,624 53	31,102 50	45,794 80	$14,692 30	.....
1000	1000	Third Assistant Engineer W. Stotesbury	8,060 00	15,865 00	23,925 00	35,226 77	11,301 77	.....
1000	1000	Third Assistant Engineer C. L. Steever	8,060 00	15,865 00	23,925 00	35,226 77	11,301 77	.....
480	480	Master's Mate John Woodman	3,868 81	7,615 19	11,484 00	16,908 85	5,424 85	.....
360	360	Fireman Samuel Higgins	2,901 50	5,711 51	8,613 01	12,681 63	4,068 62	.....
240	240	Coal heaver R. Hamilton	1,934 41	3,807 60	5,742 01	8,454 42	2,712 41	.....
192	192	O. Seaman E. J. Houghton	1,547 53	3,046 07	4,593 60	6,763 54	2,169 94	.....
192	192	O. Seaman Bernard Harley	1,547 53	3,046 07	4,593 60	6,763 54	2,169 94	.....
192	192	O. Seaman D. G. George (W. Smith)	1,547 53	3,046 07	4,593 60	6,763 54	2,169 94	.....
168	168	Landsman R. H. King	1,354 09	2,665 31	4,019 40	5,918 10	1,898 70	.....
168	168	Landsman L. Deming	1,354 09	2,665 31	4,019 40	5,918 10	1,898 70	.....
168	168	Landsman H. Wilkes	1,354 09	2,665 31	4,019 40	5,918 10	1,898 70	.....
	6,420		77,322 27	173,962 02	251,284 29	251,284 29	61,707 64	61,707 64
		Differences	4,661 48	4,661 48				
			72,660 79	178,623 50				

Rate—$35.22677 on each dollar of pay.

11 II.—*General traverse.—Filed Sept.* 27, 1882.

And now comes the Attorney-General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

THOMAS SIMONS,
Assistant Attorney-General.

12 III. *Findings of fact and conclusion of law.*

No. 13309. Francis H. Swan,
No. 13416. Charles Stotesbury, administrator of William Stotesbury,
No. 13083. Charles L. Steever,
No. 13211. John A. Hawes, administrator of John Woodman,
No. 13212. John Muldoon, administrator of Samuel Higgins,
No. 13212. Mary J. Hamilton, administratrix of Richard Hamilton,
No. 13221. William C. Williamson, administrator of Edward J. Houghton,
No. 13221. Bernard Harley,
No. 13221. Daniel G. George, known as William Smith the first,
No. 13390. Henrietta A. Buckbee, administratrix of Robert H. King,
No. 13390. Henry Wilkes,
No. 13390. Julius O. Deming, administrator of Lorenzo Deming,

vs.

THE UNITED STATES.

FINDINGS OF FACT.

These cases having been heard before the Court of Claims, the court, upon the evidence, finds the facts in each case to be as follows:

I.

At the time of the capture of the rebel ram Albemarle, as hereinafter found, the North Atlantic Blockading Squadron was under the command of Rear-Admiral David D. Porter, whose fleet captain was Lieutenant-Commander K. Randolph Breese; and a division of said squadron, known as the Division of the Sounds, was commanded by Commander William H. Macomb.

II.

In October, 1864, Lieutenant William B. Cushing, U. S. Navy, was, by order of the Secretary of the Navy, detached from the command of the U. S. ship Monticello, and directed to report to Rear-Admiral Porter for such duty as he might assign him in said squadron.

III.

Said Cushing was, by Rear-Admiral Porter, assigned to the command of "United States Picket Launch No. 1," an armed torpedo launch, propelled by steam and attached to said squadron, and a part of said Division of the Sounds.

IV.

The following are the names of the officers and crew on board said launch at the time of the capture hereinafter mentioned, the rank
13 then held by each of them, and the rate of pay which each of them was then entitled to:

Name and rank.	Pay.
William B. Cushing, lieutenant	$1,875
Francis H. Swan, acting assistant paymaster	1,300
William Stotesbury, third assistant engineer	1,000
Charles L. Steever, third assistant engineer	1,000
William L. Howarth, acting master's mate	480
Thomas S. Gay, acting master's mate	480
John Woodman, acting master's mate	480
Samuel Higgins, first-class fireman	360
Richard Hamilton, coal-heaver	240
Edward J. Houghton, ordinary seaman	192
Bernard Harley, ordinary seaman	192
William Smith, ordinary seaman (Daniel G. George)	192
Robert H. King, landsman	168
Henry Wilkes, landsman	168
Lorenzo Deming, landsman	168

The person named William Smith, in this table, was otherwise known as Daniel G. George.

It does not appear that said Picket Launch No. 1 had any books.

V.

On the night of October 27, 1864, the rebel iron-clad ram Albemarle was captured and sunk by said Picket Launch No. 1, at Plymouth, on the Roanoke River, in the State of North Carolina.

VI.

Afterwards the said ram Albemarle was raised by the United States forces, and appropriated to the use of the United States. Before being so appropriated she was appraised by a duly appointed board of naval officers, at the value of $79,944; which amount was by the Secretary of the Navy deposited with the assistant treasurer of the United States at Washington.

VII.

Proceedings to condemn the said ram Albemarle as prize were instituted in the district court of the United States for the District of Columbia, by which court, on the 21st day of August, 1865, an order was made for the payment, out of said sum of $79,944, of costs to the amount of $2,645.30, and that the remainder, to wit, $77,298.70, should be paid to the credit of the Treasurer of the United States, to be distributed accord-

ing to the terms of a decree of distribution passed in the case on the same day; which decree was in the terms following:

THE UNITED STATES
vs.
THE REBEL RAM ALBEMARLE, HER TACKLE, &C.
} No. 146. In prize. Decree of distribution.

A final decree of condemnation of the rebel ram Albemarle having been duly rendered herein by the court, and it appearing by the papers filed in court, under the seal of the Navy Department, that the said rebel ram having been taken and appropriated by the Government of the United States for the use of the United States, was appraised at the sum and value
14 of ($79,944) seventy-nine thousand nine hundred and forty-four dollars. And it further appearing that the aggregate sum of the costs and disbursements herein, together with the allowance made to the counsel for captors, under a special stipulation filed with the papers in the case, and as by the adjustment of the same, pursuant to the provisions of the act of June 30th, 1864, on file in the office of the clerk, is two thousand six hundred and forty-five dollars and thirty cents ($2,645.30), and that the net amount for distribution on the basis of the said adjustment is therefore the sum of seventy-seven thousand two hundred and ninety-eight dollars and seventy cents ($77,298.70).

It is now ordered and decreed, on the motion of the district attorney, the counsel for the captors assenting to the same, that the aforesaid net amount be deposited in the Treasury of the United States, and be distributed according to law. And it further appearing that the papers filed in said cause, under the seal of the Navy Department, and the affidavit in behalf of the captors, show what public ship is entitled to share in the said prize, and whether the said prize was of superior, equal, or inferior force to the vessel making the capture, and there being no conflicting claim;

Now, therefore, it is adjudged and decreed that the prize was of superior force to the vessel making the capture, and that the whole of the residue of said valuation be paid to the captors, as follows: One-twentieth of said residue to the officers commanding the North Atlantic blockading squadron at the time of said capture; one-hundredth part of the said residue to the fleet captain of said North Atlantic blockading squadron, and the remainder distributed to the other persons doing duty on board said torpedo launch in proportion to their respective rates of pay in the service.

VIII.

Before any distribution was made of said sum of $77,298.70, three of the said officers of said Picket Launch No. 1 were promoted as follows:

Lieutenant William B. Cushing was, in February, 1865, promoted to lieutenant-commander, to take rank from October 27, 1864.

Acting Master's Mate William L. Howarth was, on the 16th of March, 1865, promoted to acting ensign, to date from September 17, 1864; and on the 24th of March, 1865, he was promoted to the grade of acting master, to date from October 27, 1864.

Acting Master's Mate Thomas S. Gay was promoted to the grade of acting ensign, March 11, 1865, to date from October 27, 1864.

IX.

In pursuance of the act of April 1, 1872, "relating to the capture of the Albemarle" (17 Stat. L., 649, ch. 76), the district court of the United States for the District of Columbia, on the 5th day of June, 1872, took up and re-examined the aforesaid prize case of said ram Albemarle; and thereupon ordered and decreed a reappraisal of said ram by Post Captain Earl English, Commodore William E. Le Roy, and Commander Robert F. R. Lewis, all of the United States Navy, who, after having been duly sworn truly to value and appraise the said ram, did make report to said court on the 26th of June, 1872, that they appraised the same at the sum of $282,856.90 at the date when she was captured, in hull, armor, engines, guns, stores, and equipments. Thereupon the said court ratified and confirmed said appraisal, and ordered that that sum, less $79,944 previously deposited with the assistant treasurer of the United States, as stated in Finding VI, should be deposited with the said assistant treasurer, subject to the order of the court; and thereupon the Secretary of the Navy caused to be deposited with said assistant treasurer the sum of $202,912.90.

15

X.

In further pursuance of said act the said district court, on the 11th day of February, 1873, made and entered the following decree of distribution:

THE UNITED STATES
vs.
THE REBEL RAM ALBEMARLE. } No. 146. In prize.

This cause coming on to be heard and for final decree, the district attorney of the United States for the District of Columbia appeared for the United States, and the captors were represented by their proctors, whereupon the proceedings were read and considered, and it appearing to the court that on the first day of April, A. D. 1872, an act of Congress was approved by the President requiring this court to take up and re-examine this cause, that the captors might obtain an appraisal such as is required by the prize laws of Congress, and that on the third day of June, A. D. 1872, Commander William B. Cushing, of the U. S. Navy, who commanded the expedition on board the torpedo launch which captured the said prize, filed in this court his petition on behalf of himself and the other captors, praying the order of this court for such appraisement, whereupon a board of appraisers was appointed to make such appraisement, and notice was directed to be given, and was given, by public advertisement of these proceedings to all persons claiming to be interested therein for the term of three weeks, and after the expiration thereof the said board returned their appraisement, valuing the said prize at the sum of two hundred and eighty-two thousand eight hundred and fifty-six dollars and ninety cents ($282,856.90), to which report no exceptions were filed, either by the United States or the captors, and the same was on the ninth day of July, A. D. 1872, ratified and confirmed, and that thereafter, on the eighth day of January, A. D. 1873, Congress made an appropriation, to enable the Secretary of the Navy to pay the captors of the said prize, of the sum of two hundred and two thousand nine hundred and twelve dol-

lars and ninety cents, being the difference between the value of the said vessel as appraised under the order of this court, and the amount heretofore deposited by the Secretary of the Navy with the assistant treasurer of the United States as part of the value of said prize, which sum of two hundred and two thousand nine hundred and twelve dollars and ninety cents ($202,912.90) has been deposited with the assistant treasurer of the United States at Washington, subject to the order of this court. And it being further seen that on the 12th day of July, A. D. 1872, Commander William H. Macomb, U. S. Navy, filed his petition in this cause claiming to share in the prize as commander of a division of the North Atlantic blockading squadron, and has offered evidence to prove his claim as commanding such division; and it being further seen that on the 5th day of August, 1872, William Peterkin, and, on the 9th day of January, A. D. 1873, Wilson P. Burlingame filed their petitions, by leave of the court, claiming a share in the prize, as having been part of the crew of a cutter which accompanied the torpedo launch on the expedition to capture the prize, but was ordered back before the attack was made, but neither of said petitioners having offered any evidence to support their claim, while, on the other hand, the persons doing duty on the torpedo launch have offered evidence to prove that the said cutter was not within signal distance of the torpedo launch at the time of capture, nor under circumstances, nor in a condition to render any aid.

And at this hearing no objection is made on the part of the said petitioners, Burlingame and Peterkin.

Now, therefore, it is, this eleventh day of February, A. D. 1873, ordered, adjudged, and decreed that of the said amount of two hundred and two thousand nine hundred and twelve dollars and ninety cents ($202,912.90) there be paid into the hands of the marshal of the District of Columbia the sum of seven thousand and seventy-six dollars and fifty-one cents ($7,076.51), to be by him paid, according to the bill of costs taxed and allowed by this court, and that the residue of said sum so as aforesaid appropriated, to wit, the sum of one hundred and ninety-five thousand eight hundred and thirty-six dollars and thirty-nine cents ($195,836.39), be deposited in the Treasury of the United States, to be distributed as follows, that is to say: One-twentieth part thereof to the officer commanding the North Atlantic blockading squadron, one-hundredth part thereof to the fleet captain of the said blockading squadron, one-fiftieth part thereof to the officer commanding that division of the said squadron called the Division of the Sounds of North Carolina, together with the further sum of fifteen hundred and forty-five dollars and ninety cents ($1,545.90), being one-fiftieth part of the sum heretofore decreed by this court to be distributed, and that the remainder be distributed to the persons doing duty on the torpedo launch in proportion to their respective rates of pay in the service.

16 XI.

In all the proceedings in said United States district court hereinbefore set forth, there was no appearance in said court by or on behalf of any of the captors of said ram Albemarle, except the said William B. Cushing.

XII.

Of the total amount of the appraised value of said ram Albemarle which was ordered for distribution by the two decrees above set forth, there remained for distribution among the officers and crew of Picket Launch No. 1, after deducting the shares paid to the fleet officers, Rear-Admiral Porter, Fleet Captain Breese, and Division Commander Macomb, the sum of $251,284.29. This sum was distributed by the officers of the Treasury Department in two payments, one under the decree of August 21, 1865, the other under the decree of February 11, 1873. In each of said payments all the officers and crew of the Picket Launch, or their legal representatives, except the said Cushing, Howarth, and Gay, were paid in proportion to the respective rates of pay to which they were by law entitled on the day of said capture; while the said Cushing, Howarth, and Gay were, by order of the Secretary of the Navy, paid in proportion to the rates of pay of the grades to which, after the capture, they were promoted, as set forth in Finding VIII.

The aggregates of the sums respectively received by the officers and crew of the Picket Launch, or their legal representatives, in the two payments made under the said two decrees, were as follows:

W. B. Cushing	$56,056 27
F. H. Swan	31,102 50
W. Stotesbury	23,925 00
C. L. Steever	23,925 00
W. L. Howarth	35,887 50
T. S. Gay	28,710 00
J. Woodman	11,484 00
S. Higgins	8,613 01
R. Hamilton	5,742 01
E. J. Houghton	4,593 60
B. Harley	4,593 60
W. Smith (D. G. George)	4,593 60
R. H. King	4,019 40
H. Wilkes	4,019 40
L. Deming	4,019 40
	251,284 29

CONCLUSION OF LAW.

Upon the foregoing facts the conclusion of law, on the grounds set forth in the opinion of the court, is, that the said several claimants are entitled to recover the following sums respectively; which sums, in addition to the amounts already paid them respectively, make the share of each of those captors equal to his share of the prize-money awarded to Picket Launch No. 1, according to the provisions of the prize laws in force at the time of said capture:

Francis H. Swan	$14,691 00
William Stotesbury's administrator	11,301 00
Charles L. Steever	11,301 00
John Woodman's administrator	5,424 48
Samuel Higgins's administrator	4,068 35

17	Richard Hamilton's administrator	$2,712 23
	Edward J. Houghton's administrator	2,169 79
	Bernard Harley	2,169 79
	Daniel G. George	2,169 79
	Robert H. King's administrator	1,900 22
	Henry Wilkes	1,900 22
	Lorenzo Deming's administrator	1,900 21
		61,708 38

IV. *Opinion of the court.*

DRAKE, Ch. J., delivered the opinion of the court.

These cases came into this court under the following act of Congress, passed August 8, 1882 (22 Stat. L., 738, ch. 480):

AN ACT to refer the claim of the captors of the ram Albemarle to the Court of Claims.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the claims of the captors of the ram Albemarle, which was captured and destroyed October twenty-seventh, eighteen hundred and sixty-four, be, and the same hereby are, referred to the Court of Claims, with jurisdiction and authority to hear and determine the same, and all defenses thereto which are or may be open to the United States, and to render judgment thereon, with the right of appeal as in other cases; and if said court shall find that either or any of said captors has not or have not received his or their full and just share of the prize-money awarded for the capture of said ram Albemarle, according to the proportions provided in the prize laws in force at the time of said capture, and that he or they are entitled to claim and recover the same, the said court shall render judgment in favor of such captor or captors, respectively, or his or their legal representatives, for such sum or sums as shall in addition to the amount already paid make the share of such captor or captors, respectively, equal to his or their respective share or shares of said prize-money, according to the provisions of the prize laws in force at the time of said capture; provided that no suit shall be brought under the provisions of this act after one year from the date of its passage.

SEC. 2. That any judgment rendered by the Court of Claims under the provisions of the first section of this act shall be paid by the Secretary of the Treasury out of any money in the Treasury applicable to the payment of prize to captors; and if there shall not be money applicable for that purpose in the Treasury, or sufficient therefor, then the same, or any deficiency thereof for which prize-money in the Treasury is insufficient, shall be paid out of any money in the Treasury not otherwise appropriated.

Under this act the claims of all the officers and men of Picket Launch No. 1, the captor of the ram Albemarle, except those of her commander William B. Cushing, and master's mates William L. Howarth and Thomas S. Gay, have been presented in this court within the time limited in the act. As the cases all rest on the same facts and law, one finding of facts and one opinion on the law will suffice for all of them.

Under the two decrees of distribution made by the United States district court for the District of Columbia, set forth in the findings, each of the officers and men of said picket launch, or his administrator, was paid the distributive share apportioned to him by the Treasury Department, as set forth in Finding XII; but each party now before the court claims that the amount so paid was not as much as he, or his intestate, ought to have been paid; and therefore each asks for a judgment here for an additional amount, under this language of said act:

"If said court shall find that either or any of said captors has not or have not received his or their full and just share of the prize-money awarded for the capture of said ram Albemarle, according to the proportions provided in the prize laws in force at the time of said capture, and that he or they are entitled to claim and recover the same, the said court shall render judgment in favor of such captor or captors, respectively, or his or their legal representatives, for such sum or sums as shall in addition to the amount already paid make the share of such captor or captors, respectively, equal to his or their respective share or shares of said prize money according to the provisions of the prize laws in force at the time of said capture."

'8 Under this provison the first question in each case is, whether the claimant, or his intestate, has received his full and just share of the prize money awarded to the picket launch for the capture of the Albemarle, according to the provisions of the prize laws in force at the time of the capture. If he has, his petition must be dismissed; if he has not, the next question is, whether he is "entitled to claim and recover the same" at this time and in this proceeding. We will consider these questions in their order.

In regard to the first, it is found that the claimants now in court, or their intestates, were paid as follows:

F. H. Swan	$31,102 50
W. Stotesbury	23,925 00
C. L. Steever	23,925 00
J. Woodman	11,484 00
S. Higgins	8,613 01
R. Hamilton	5,742 01
E. J. Houghton	4,593 60
B. Harley	4,593 60
W. Smith (D. G. George)	4,593 60
R. H. King	4,019 40
H. Wilkes	4,019 40
L. Deming	4,019 40

Whether the sum so paid each party was his "full and just share" of the prize money depends on the terms of the act of June 30, 1864, "to regulate prize proceedings and the distribution of prize money, and for other purposes." (13 Stat. L., 306, ch. 174.)

By section 10 of that act the distribution of prize money is regulated; and, after providing for certain specific shares, it thus reads:

"After the foregoing deductions, the residue shall be distributed and proportioned among all others doing duty on board * * * and borne upon the books of the ship, in proportion to their respective rates of pay in the service."

A simple arithmetical computation is only necessary to disclose the fact, that if the payments of prize money made to Cushing, Howarth, and Gay, as set forth in Finding XII, were lawfully due them, then the present claimants received all that they were entitled to, and can recover no more here; but if those payments were not lawfully due those three parties, then whatever excess they received over the true amount due them was just so much taken from the fund to be divided among the others; and whatever was so taken must, under the act giving us jurisdiction herein, be made good to the present claimants, unless the Government can establish a valid defense against their claims. The first point to be considered then, is whether the payments made to those three were valid in law.

And first, as to Lieutenant Cushing. The claimants contend that under the prize act he, as commander of the picket launch, was entitled to only one-tenth of the prize money awarded to the launch. On the other hand, the defendants claim that he was rightly paid "in proportion to his rate of pay in the service," partly as a lieutenant and partly as a lieutenant-commander under his subsequent promotion, dated back to the day of the capture.

By section 10 of the prize act it is enacted thus:

"All prize money adjudged to the captors shall be distributed in the following proportions, namely: * * *

"Fourth. To the commander of a single ship, one-tenth part of all the prize money awarded to the ship under his command, if such ship, at the time of the capture, was under the command of the commanding officer of a fleet or squadron, or a division, and three-twentieths if his ship was acting independently of such superior officer."

19 It is not claimed that the picket launch, when she made the capture, was acting independently of the commanding officer of the squadron, or of the division; on the contrary, the fact is found that she was acting under the command of both. If, then, her commander came at all within the purview of that fourth clause, he was entitled to only one-tenth of the prize money awarded to the launch.

Against this view the counsel for the Government urges that the picket launch was not a ship at all within the meaning of that provision, and therefore that Cushing was not subject to that clause. If that position be true, in fact and in law, then, of course, Cushing was not restricted to one-tenth; but we have not been able to see that it is true.

The word ship, in its generic sense, means any sea-going craft larger than an undecked boat. Benedict says that in the law the word is equivalent to vessel; and that it is not the form, the construction, the rig, the equipment, or the means of propulsion, that makes a ship, but the purpose and business of the craft, as an instrument of naval transportation. (Benedict's Admiralty, §§ 215, 218.)

There is a specific sense in which the term "ship," applied to sailing vessels, means a craft having three masts, with cross yards on each mast, fitted to carry square sails on each, in addition to a number of fore and aft sails. When such a craft is provided with steam power as well as sails she is called a steamship. In the specific sense, no barque, brig, brigantine, schooner, or sloop, is a ship

Now, let it be remembered that the prize act of 1864 was passed in time of war, when squadrons of our Navy were blockading hundreds of miles of

sea-coast, and were made up of vessels of almost every size, form, rig, and armament. Prizes of great value were daily liable to be taken. Congress passed that act to stimulate their capture; and every officer and man on every vessel, big or little, no matter what its specific denomination, was on the lookout for them, and was ready to encounter great risks to capture them.

Under such circumstances the question naturally arises, whether Congress would be most likely to offer the benefits of the fourth clause aforesaid to the commander of every vessel making a capture when alone, regardless of her specific denomination, or to confine those benefits to the commanders of the very limited number of vessels entitled to the specific name of "ship," because of their having three masts, with cross yards, on each of which they could carry square sails. To state such a question is to answer it. The latter cannot be supposed possible.

Moreover, all through the act the word "vessel" seems evidently intended to apply to and include every species of sea-going craft employed in the Navy; but in the 10th section some unskillful hand substituted "ship" for "vessel," without any apparent reason so far as we can discern. If that substitution makes a change of sense at all it is a change which introduces discord, unreasonableness, and incongruity into the act. But to treat the word "ship" synonymous with "vessel" avoids all incongruity, and preserves the integrity and consistency of the act throughout.

But furthermore, the thirty-second section of the act seems to us to forbid question on this subject. It is as follows:

"That in the term 'vessels of the Navy' shall be included, for the purposes of this act, all armed vessels officered and manned by the United States, and under the control of the Department of the Navy."

Though these words seem to apply only to the phrase "vessels of the Navy," yet we think they may justly be applied also to the word vessel wherever in that act that word is meant to refer to vessels belonging to our Navy, and cannot be fairly construed to mean any others.

The phrase "vessels of the Navy" occurs in the act only four times; once in section 10, twice in section 16, and once in section 23; and in each instance it is used to prevent those vessels, or rights connected with them, from being confused with privateers and letters-of-marque, or rights connected with them. Everywhere else than in those four instances the word vessel or vessels stands without the addition of the words, "of the Navy," for the simple reason that the constant repetition of those three words, in that connection, would have been an excrescence.

We therefore hold that wherever in the act it appears by the context that vessel or vessels means a vessel or vessels belonging to the Navy, it must, under said section 32, be construed to include "all armed vessels officered and manned by the United States, and under the control of the Department of the Navy."

If, then, ship and vessel are, in law and in this act, synonymous terms, it follows, of course, that Lieutenant Cushing was "the commander of a single ship" within the meaning of the fourth clause in question. And as the picket launch was, at the time of the capture, acting under the command of the commanding officer of the squadron, and also of the Division of the Sounds, it would clearly seem to follow that, under that

clause, Lieutenant Cushing was limited to "one-tenth part of the prize-money awarded to the ship under his command." The whole amount of prize-money awarded to the picket launch was $251,284.29, one-tenth of which is $25,128.43, which would seem to be all that he was entitled to. But he was, in fact, paid $56,056.27 which is $30,927.84 more than the one-tenth, to pay which to him took just that much from the claimants now seeking relief here. If there was lawful authority for giving him that excess, the payment must stand as a proper deduction from the gross amount of prize-money; but if it was a payment made without lawful authority, the claimants are not precluded by it from recourse here.

Lieutenant Cushing came to be paid $56,056.27 by computing his share of the prize-money "in proportion to his rate of pay in the service," and the counsel for the Government contends that this was in accordance with law. To sustain that position he relies on the terms of the two decrees of the district court, set forth in the finding of facts.

Each of those decrees closes with an order that "the remainder" of the prize-money, after deducting costs, charges, and shares of fleet officers, should be "distributed to the persons doing duty on board said torpedo launch in proportion to their respective rates of pay in the service."

If the district court had jurisdiction to make that order, then the payment of $56,056.27 to Cushing was lawful and must stand. But had it that jurisdiction? Let us see.

That the court, in passing upon the matter of prize in the case of the Albemarle, was exercising a special and limited power, derived solely from, and exercisable only according to, the prize act of 1864, and that it could take only such judicial action through such modes of procedure as that act authorized and prescribed, cannot be for a moment questioned. In that case there can be no presumption in favor of jurisdiction; on
21 the contrary, the proceedings of the court must be held illegal unless they were according to the statute, and the facts conferring jurisdiction appear affirmatively. (Thatcher vs. Powell, 6 Wheaton, 119; Walker vs. Turner, 9 Ibid., 541; Harvey vs. Tyler, 2 Wallace, 328.)

That the question whether that court had jurisdiction to make the order aforesaid may be examined and determined here cannot be doubted; for no rule of law is better settled than that the jurisdiction of any court, exercised in any case, may be assailed in other courts in which its proceedings are relied on by a party claiming the benefit of them (Elliott vs. Pearsol, 1 Peters, 338; Shriver vs. Lynn, 2 Howard, 43); and if there be found in them a total want of jurisdiction, they may, by the court in which they are questioned, be rejected as a nullity, conferring no right and affording no justification. (Thompson vs. Tolmie, 2 Peters, 157; Voorhees vs. Bank U. S., 10 Ibid., 449; Cook's Case, 9 C. Cls., 288.)

By section 4 of the prize act it is made the duty of the district attorney of the United States to file a libel against the prize property and "proceed diligently to obtain a condemnation and distribution thereof."

What is the meaning there, as elsewhere in the act, of the word distribution? We have carefully read and considered the entire act, and have reached the conclusion that that word refers to two things: first, a division of the prize-money between two or more vessels making or aiding in the capture; or between the capturing vessel or vessels and the United States; and second, a division among the fleet officers, and the officers and

crew of a capturing vessel, of the prize-money awarded to her by judicial decree.

We have also come to the conclusion that the former division or distribution must be decreed by a prize court, and can be no otherwise made; but that the latter cannot be decreed by that court, but must be made by the Treasury and Navy Departments, and can be made by no other authority in the Government.

By sections 9 and 10 of the prize act it is enacted—

"§ 9. That in case a decree of condemnation shall be rendered, the court shall consider the claims of all vessels to participate in the proceeds; * * * [and] the court shall make a decree of distribution, determining what vessels are entitled to share in the prize, and whether the prize was of superior, equal, or inferior force to the vessel or vessels making the capture. And said decree shall recite the amount of the gross proceeds of the prize subject to the order of the court, and the amount deducted therefrom for costs and expenses, and the amount remaining for distribution, and whether the whole of such residue is to go to the captors, or one-half to the captors and one-half to the United States.

"§ 10. That the net proceeds of all property condemned as prize shall, when the prize was of superior or equal force to the vessel or vessels making the capture, be decreed to the captors; and when of inferior force, one-half shall be decreed to the United States and the other half to the captors."

These are the only provisions which authorize the prize court to decree distribution in cases of naval vessels. To any intelligent reader it could not, it seems to us, be otherwise than manifest that there is not in them the least ground on which to base a claim of right in the prize court to make a distribution of prize-money among individual captors; but that its whole authority is, in terms, confined to determining, 1. What net amount or residue remains for distribution; 2. What vessels are entitled to share in that residue; 3. Whether the prize was of superior, equal, or inferior force to the capturing vessel or vessels; and 4. Whether the whole of the residue should go to the captors, or one-half to the captors and one-half to the United States.

22 There is but one instance named in that act in which the prize court may itself make distribution among individual captors, and that is in the case of captures by privateers and letters-of-marque; concerning which it is declared in section 10 that the whole shall be decreed to the captors, unless it be otherwise provided in the commission issued to such vessels; and in section 16 "the distribution shall be made by the court to the several parties entitled thereto"; and that the court may appoint a commissioner to make such distribution.

On the other hand, as to distribution of prize-money to the individual captors on a naval vessel, section 16 declares—

"That the net amount decreed for distribution to the United States, or to vessels of the Navy, shall be ordered by the court to be paid into the Treasury of the United States, to be distributed according to the decree of the court. And the Treasury Department shall credit the Navy Department with each amount received to be distributed to vessels of the Navy; and the persons entitled to share therein shall be severally credited in their accounts with the Navy Department with the amounts to which they are respectively entitled."

Here the words "to be distributed according to the decree of the court" might seem at first blush to justify the court in decreeing distribution among individual captors; but when we remember the explicit terms of section 9, and consider the manifest purpose of the act, as already shown, we have no difficulty in holding that the distribution referred to in those words is that between vessels, or between a vessel or vessels and the United States; and that those words confer no right on the court to decree that the residue be distributed among individuals in this or that proportion, or by this or that rule. The rights of the officers and crew of the capturing naval vessel are not left to depend on a judicial ascertainment and fixation of the distributive share of each one; for section 10 declares how and in what proportions distribution shall be made, and section 16 imposes the duty of distribution upon the Treasury and Navy Departments.

So far, then, as the decrees of the district court assumed to order distribution to persons doing duty on the torpedo launch, it acted without any lawful authority, and its decree was, in that particular, *coram non judice* and void. But it was doubly so when it undertook to order that the distribution should be to "the persons," that is, all the persons "doing duty on the torpedo launch, in proportion to their respective rates of pay in the service"; for the commander of the launch was, by clause 4 of section 10, first to be paid one-tenth part of all the prize-money, and the distributive residue could not be found until that one-tenth should be deducted. Of that deduction the district court took no notice; and so Lieutenant Cushing came to be paid more than, in law, he was entitled to; and the other officers and the men of the launch, now here as claimants, lost just the excessive amount paid him.

The wrong of this becomes more striking on a critical view of these words in the fifth clause of section 10—

"After the foregoing deductions, the residue shall be distributed and proportioned among all others doing duty on board * * * in proportion to their respective rates of pay in the service."

"The residue" was what remained "after the deduction" *inter alia*, of the commander's one-tenth; and those words commanded that residue to be distributed "among all others doing duty on board." More
23 mandatory and peremptory words might, perhaps, have been chosen to express the idea there intended, but they would not more plainly have indicated the legislative purpose that the commander should not share in the distribution of the "residue." The act of the officers of the Treasury and Navy Departments in making the payments they did to him was, therefore, wholly unauthorized, though they, doubtless, considered it lawfully ordered by the district court's decrees.

But there was another element of illegality and wrong in the payments to Cushing, as also in those to Masters' Mates Howarth and Gay, which it devolves on us to rectify and remedy. As set forth in Finding VIII, each of those three officers was promoted, between the date of the capture and that of the first distribution of prize-money. Cushing became commander, and Gay became ensign, each to take rank from that date; while Howarth was made ensign from September 17, 1864, and master from the date of the capture. Each of those officers received prize-money, not in proportion to the rate of pay he was by law entitled to on the day of the capture, but to the rate of pay appertaining to the grade to which he was subsequently promoted. This, we suppose, was allowed by the De-

partment officers on the theory that, as the promoted pay was given them back to the day of the capture, they were entitled to prize-money in proportion to it; but in our view this was altogether erroneous.

In every case such as this, the rights of the captors are declared by statute, and they become fixed at the moment of capture, and nothing less than a statute can divest, diminish, or unsettle the rights so fixed.

In every case where, as in this, a fight precedes the capture, there are necessarily deaths among the captors; but the rights of the dead are not thereby lost or impaired, but survive in their legal representatives; and cannot be affected by anything subsequently done by the survivors, by courts, by governmental Departments, or by Government officers.

If so with regard to the dead, why not as to the living? No valid reason, as it seems to us, can be given why it should not be so, and only so, as to both dead and living.

From this it follows that whoever gets more than his "full and just share of the prize-money," diminishes to that extent the full and just share of every other one of the captors, living or dead; not only without lawful authority, but, as we consider, regardless of law.

Our views on this subject are in direct accordance with those of the late Attorney-General Pierrepont (15 Opinions, 63), and we do not understand the counsel for the Government now to claim that that officer's opinion was incorrect.

From all the foregoing considerations we have reached these conclusions:

1. That Lieutenant Cushing had no lawful right to prize-money in proportion to his rate of pay.

2. That his rightful share of the prize money was the one-tenth of $251,284.29, and no more.

3. That Howarth and Gay were entitled to prize-money only in proportion to the rate of their pay as master's mates on the day of the capture.

4. That Cushing was paid $30,927.84, Howarth $18,979.02, and Gay $11,801.52 more than they were respectively entitled to in law,
24 and that the amount to go to all the other captors was reduced by the aggregate of those three sums, namely, $61,708.38.

If these conclusions be correct, why are not these claimants respectively entitled to judgments, in the words of the statute giving us jurisdiction, "For such sum as shall in addition to the amount already paid make the share of such captor * * * equal to * * * his share * * * of said prize-money, according to the provisions of the prize laws in force at the time of said capture?"

The counsel for the Government contends that all the present claimants were represented by counsel in the district court, and that, doubtless, the counsel framed the decrees which placed Cushing among those who were to receive in proportion to their respective rates of pay. But we have found as a fact that none of the captors but Cushing was so represented in that court; and it is quite plain that he was directly and largely interested in having the decrees put into that shape. But even had all the captors been represented there, and had every one assented to that shaping of the decrees, it could not have made valid what, for want of jurisdiction in the court, was void. The reports of the country are full of decisions holding that no consent of parties can confer upon a court jurisdiction of a subject-matter not put by law within the scope of its powers.

The counsel further contends that these claimants having acquiesced in two distributions, well knowing that distribution meant exhaustion of the fund, they are estopped by their silence, at least as to the amount involved in the second distribution, namely, $195,836.39, from now claiming any more. Whatever force this position might have at common law, we do not see how it can have any under the statute giving us jurisdiction of these cases. By it, if we "find that any of said captors has not received his full and just share of the prize-money, * * * according to the proportions provided in the prize laws in force at the time of said capture, and that he is entitled to claim and recover the same," we are commanded "to render judgment in favor of such captor" for such sum as shall give him his full and just share.

This mandate would seem to be a waiver by the United States of any estoppel growing out of acquiescence on the part of the claimants in the payments made in conformity to the decrees of the district court.

But it is claimed that inasmuch as the statute declares that the claims brought here in pursuance of it shall be subject to "all defenses thereto which are or may be open to the United States"; and, furthermore, requires us to find that the claimants are "entitled to claim and recover" their full and just shares of the prize money; therefore the defense of estoppel by acquiescence may justly be set up.

To this there seems to us to be a ready and sufficient answer. The reports of committees in the two Houses of Congress show that Congress was perfectly advised when it passed the act that the claimants had received two payments of prize-money. If that body had regarded the receipt of those payments as an estoppel of any claim for more, the manifest presumption is that it would not have passed the act at all. Having passed it, the stronger presumption arises, that it did not mean, while authorizing the parties to appeal to this court for redress, that they should be driven hence by an estoppel, which Congress either ignored or set aside as unworthy of consideration.

The following table shows how the $251,284.29, awarded to the
25 picket launch, ought to have been distributed in order to conform to the prize act; what excess over their lawful shares was paid to Cushing, Howarth, and Gay; and what sum should be paid to each of the captors, except those three, so as, when added to what he has already received, to make up to him the share he was rightly entitled to, according to the terms of that act.

Name.	True amount.	Amount paid.	Excess.	Due.
W. B. Cushing	$25,128 43	$56,056 27	$30,927 84	
F. H. Swan	48,793 80	31,102 50		$14,691 00
W. Stotesbury	35,226 00	23,925 00		11,301 00
C. L. Steever	35,226 00	23,925 00		11,301 00
W. L. Howarth	16,908 48	35,887 50	18,979 02	
T. S. Gay	16,908 48	28,710 00	11,801 52	
J. Woodman	16,908 48	11,484 00		5,424 48
S. Higgins	12,681 36	8,613 01		4,068 35
R. Hamilton	8,454 24	5,742 01		2,712 23
E. J. Houghton	6,763 39	4,593 60		2,169 79
B. Harley	6,763 39	4,593 60		2,169 79
W. Smith (Daniel G. George)	6,763 39	4,593 60		2,169 79
R. H. King	5,919 62	4,019 40		1,900 22
H. Wilkes	5,919 62	4,019 40		1,900 22
L. Deming	5,919 61	4,019 40		1,900 21
	251,284 29	251,284 29	61,708 38	61,708 38

This table shows the very remarkable fact that the adjudged share of each of three of the subordinate officers of the launch is greater than that of Lieutenant Cushing, to whose extraordinary skill and gallantry was undoubtedly owing the success of the most daring adventure probably in all naval warfare. We are constrained by our views of the law to a conclusion which gives an assistant paymaster $20,665.37, and each of two third assistant engineers $10,097.57, more than the commander. Without doubt this is such a result as, if foreseen by Congress as possible in any case, would have been guarded against. We are free to say that we would avoid it in framing our judgment if we could. It is an accidental outcome of a capture such as might not happen again in all the wars that the world may know in all the future. That it occurred in this case was simply because a very valuable prize was captured by only fifteen men, to whom the whole of the prize-money was awarded. Had only half of it been decreed to the launch, or had the number of the men in her been doubled, no such disproportioned result would have been possible. The defect in the law, however, is one that we have no power to cure. We can only administer the statute as we find it written, not as we think it ought to have been; and under its terms we have seen no way to avoid a result which certainly does not commend itself to our sense of justice.

Judgment will be entered in favor of each claimant, or his administrator, for the sum set opposite his name in the last column of this table as due him.

V.—*Dissenting Opinion.*

NOTT, J., dissenting:

I fully agree with every position taken and principle enunciated in the opinion of the court, save one—and as this decision may hereafter affect the rights of commanding officers situated like Lieutenant Cushing, I am constrained to express briefly the ground and extent of my dissent.

I am of the opinion that Congress could not have intended that the commanding officer of a single ship taking a prize should ever in any
26 possible case receive less prize-money than his subordinates of lower rank. Probably there is no person in this country of sufficient education to read the statute and sufficient intelligence to comprehend the meaning of its words, who would believe that Congress really intended that a special provision for a commanding officer should in some cases operate to benefit and in some operate to injure him. Probably every judge, lawyer, and layman to whom the case was stated would say that it was an oversight, a mistake, a result that Congress never really intended. What was really intended by the legislator, I think, should control what is casually expressed in a statute; and the general purpose of an act should not be overridden by the defective verbiage of any single provision which, taken literally, is abhorrent to the just and equitable purposes of the whole.

Lieutenant Cushing, it is held, was entitled to only one-tenth of the net proceeds of the prize under the fourth subdivision of the prize act, because he was commanding officer of the launch. Let it be supposed that the commanding officer of the fleet had gone on this hazardous expedition in command of the launch, would he have been entitled to only one-twentieth under the first subdivision. Or let it be supposed that the commanding officer of a division of the fleet had gone, would he have been entitled to only one-fiftieth under the second subdivision?

My conclusion in the present case is that the fourth subdivision confers a privilege and does not impose a restriction; that the privilege belongs to the commanding officer as such, and that an officer thus situated may waive his privilege as commanding officer under the fourth subdivision, and take simply his proportion as a person "doing duty on board" under the fifth subdivision.

To this extent I think the judgment here should be diminished.

27 VI. *Final judgment.*

At a Court of Claims held in the city of Washington on the 7th day of January, A. D. 1884, judgment was ordered to be entered up as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said Charles L. Steever do have and recover of and from the United States the sum of eleven thousand three hundred and one dollars ($11,301.00).

28 VII. *Application for and allowance of appeal.*

From the judgment rendered in the above-entitled cause on the 7th of January, 1884, in favor of claimant, the defendants, by their Attorney-General, on the 3d day of April, 1884, make application for and give notice of an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Assistant Attorney-General.

Filed April 3d, 1884.
Allowed.

C. D. DRAKE,
Chief Justice.

29 In the Court of Claims.

VIII.

CHARLES L. STEEVER
vs.
THE UNITED STATES. } No. 13083.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the opinion of the court, of the dissenting opinion, of the final judgment of the court, of the application of the defendants for the allowance of an appeal to the Supreme Court of the United States, and of the allowance of same by Chief Justice Drake.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington this eleventh day of October, A. D. 1884.

[SEAL.] JOHN RANDOLPH,
Assistant Clerk Court of Claims.

(Indorsement on cover:) No. 1090. The United States, appellant, *vs.* Charles L. Steever. Court of Claims. Filed 16th October, 1884.

113-747

FILED
JAN 5 1885

In the Supreme Court of the United States.

OCTOBER TERM, 1884.

STEEVER.
v.
THE UNITED STATES. } No. 1090.

BRIEF FOR THE UNITED STATES.

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113-747

Supreme Court U. S.
FILED
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JAMES H. McKENNEY
CLERK

In the Supreme Court of the United States.

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BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

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STEEVER
v.
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BRIEF FOR THE UNITED STATES.

This appeal covers twelve cases standing upon the same ground, and similarly decided by the learned Court of Claims (Record, page 8).

These involve the question, what additional legal rights to prize-money certain captors of the rebel ship Albemarle (in Roanoke River, North Carolina, in October, 1864), now have? These claimants have already participated in *two* awards for this capture, made at an interval of eight years, the last in 1873; but in 1882 Congress passed another act (p. 14), which authorized the Court of Claims to review the matter, *and if it shall find that any of the captors have not received his full and just share of the prize-money for said capture, according to the proportions provided by the prize laws then in force, &c., then it shall give judgment in his favor for such deficiency.*

The various statutes upon the subject (except that of 1882 which is in the Record at page 14) may be found in the appendix to this brief.

In general, the contention of the claimants is that Lieutenant Cushing—who commanded the *torpedo launch* known as "Picket-Boat No. 1," which captured the Albemarle,—and two other officers, received largely more than their share, and the claimants' *less*, of the prize money awarded.

Upon behalf of the United States it will be argued here [*upon the theory that the act of* 1882 *waives all technical questions arising out of the conduct of the claimants as parties to prior suits which involved the same* ~~questions~~ issues] that as an original proposition of prize law in the United States, the claimants had and have no right under the statutes which define rights of that sort, to question the distributions of 1865 and 1873; and, of course, that this is shown by the record.

In other words, the claimants cannot make out a technical title, such as the prize statute requires, to the sort of relief which they assert—a relief which for the rest would operate a distribution apparently contradictory of every principle of that natural justice which must inspire *prize legislation* equally with all other:—assigning to the "paymaster" upon the launch [*which*, including the "additional" men required by the special occasion (p. 1), and three landsmen (p. 7), *consisted of sixteen persons, entitled to no more than nine thousand dollars of yearly pay!*] for prize-money, more than $45,000; to two "assistant engineers" more than $35,000 each;

while the "commander," CUSHING, the soul of the enterprise, as much as Foote at Fort Henry in the Tennessee or Farragut at Mobile, would receive but $25,000. It is not too much to say that no useful purpose of *prize-money* can be subserved by distributions like that. The public, which gives that sort of reward, would be as little satisfied therewith as the gallant profession to whom it is given.

At the same time it is fully admitted that if the prize statute did authorize such a distribution it is the purpose of the act of 1882 *to enforce it now.*

All that is here submitted is that *the present claim is merely technical, and therefore must be technically deduced;* so completely indeed that, as upon another celebrated occasion, it may be pronounced in conclusion: "THE LAW ALLOWS IT, and the court awards it;" and so make an end.

The case of the claimant Steever is stated in his petition as that of one who in October, 1864, was serving as an acting third assistant engineer on the U. S. ship Otsego, in the waters of North Carolina, and who, after responding to the call for additional men to serve on "Picket Boat No. 1," was doing duty thereon as an engineer on the 27th day of that month, at the capture of the Albemarle. In the previous distributions of prize-money on this account he has received $23,925, but alleges that there was really then due to him $35,226.77; that is, at the present time an addition of $11,301.77.

It is not practicable for the purposes of this brief to abbreviate the *findings* of the learned court.

The line of argument that will be adopted requires no

more here than that it shall be said that the Albemarle, having been sunk in the attack by the torpedo launch, was subsequently raised, taken into the United States Navy and appraised for the benefit of the captors at $79,944; that by a decree in the district court for the District of Columbia, at August, 1865, a distribution of the proceeds thereof was made; that by statute passed in April, 1872, a reappraisement was ordered, which having taken place another amount ($195,836.39) was distributed by a decree of the same court, in February, 1873.

These decrees are given in the record; and, as already said, the appropriate statutes may be found in the appendix hereto.

Upon the findings the learned court below concluded that the district court for this District had mistaken the meaning of the prize act, to the effect claimed by the petitioner, and therefore gave judgment in his favor.

It also expressed an opinion that the district court was even *without jurisdiction* to make any distribution whatever as among the captors on board Picket Boat No. 1, such "distribution" being pronounced to be a duty assigned by statute to the Treasury and Navy Departments.

Admitting, as this brief does, that the act of 1882 intends to confer upon the Court of Claims jurisdiction to correct, as against the United States, all mistakes in the distribution of this prize-money heretofore made, it may not be necessary to assert on behalf of the claimants such suggested *want of jurisdiction*. Therefore this suggestion will be noticed in this brief only at its close, and incidentally. With all deference to the learned court below, it is believed to be unfounded.

Error is now assigned in this: that the judgment below was in favor of the claimant.

In support of this assignment it is submitted that "Picket Boat No. 1," as described in the record, was not such a "ship" or "vessel" as could communicate to a person standing in the position of the petitioner a title to dispute the distribution of this fund heretofore made.

In immediate connection with this proposition it is also submitted that under the statutes now in force any permissible *equitable distribution* (?) betwixt all who might be within these statutes, and yet could not make out title to certain technical positions of rank at the time of a capture as specified therein, would be—*not*, as perhaps in a state of nature, per capita, *nor*, as in Great Britain and formerly here, according to certain fractions, *but*—according to rate of pay in the service, for that is the general statutory rule at present. (See also Appendix, Sec. 16.) All other provisions are exceptional. After applying the old *fractional* method to some three or four officers, *all other* persons are included in one provision, *according to rate of pay*. And such is statutory *equity* also amongst privateersmen not bound by contract to some other rate. (Sec. 16.)

The deduction from this is that in a case of doubt as to the existence of a strictly technical statutory title as amongst individual claimants an American court might well be disposed to follow the statutory American principle or equity, and thereupon distribute any prize found in its hands, not *per capita*, or by *fractions*, but according to *respective rates of pay*.

What the present case requires, however, is no more than that if a court shall have so done, any dissenter must establish for himself a statutory right to dissent, *even if such distribution were without jurisdiction, or erroneous.*

It is submitted, therefore, that *the words "Borne upon the books of the ship"* are, as regards the status of the present claimants, *of the very matter of the prize statute in question.*

That phrase ear marks the "ship" or "vessel" of which the statute speaks! Although such ship need not be "square-rigged" or "three-masted," it must be a craft that carries "books;" *that sort of vessel*; a war vessel, that is, of such size, and having ordinarily such gradations of office and a crew so numerous, as that to give the commander thereof *one-tenth* of the prize-money will reasonably insure to him the *preference* in distribution to which a commander's rank and presumed merit gives title. "Books" may not be required to give the "commanding officer of the fleet" his statutory share, not "the fleet captain," &c. But as between all whose ordinary duty is on board the capturing vessel it is submitted that the phrase above quoted is most significant of the kind of vessel then in the mind of the legislature. If there were no such phrase almost every one would say that what this indicates (as now suggested) is what was "*meant*," although for want of due expression upon the face of the act that meaning could not be judicially enforced. *In presence of such phrase, however, there is no want of the necessary expression.*

The Picket Launch No. 1 had no *books* (Finding IV). That is, as the finding conveys, carried no *books* at any time.

Congress meant that "the books of the ship" should furnish evidence of the "rates of pay in the service" for "doing duty on board." It is not doubted that if these books had been destroyed or had otherwise been accidentally wanting, such accident might have been supplied by other evidence of duty and pay. The bearing and stress of this argument is to another purpose entirely, viz, that the launch was not a "books"-bearing craft in its nature, and so was out of the purview of the statute. Therefore a "paymaster" who was on it when, inspired by the command and presence of young CUSHING, it made its way during that October night into Plymouth Harbor, and fiercely springing, as if a thing of life, over the obstructions which protected the Albemarle, inflicted a fatal wound, and sent it to the bottom; and likewise the "assistant engineers," also on duty there, have no standing *in judicio* to claim that the prize act regarded them as of greater merit than him in a proportion of from 30 to 80 per cent! *I make no doubt, indeed, that these brave men regard the ground of their present contention as being a mere statutory miscarriage, and that they will be rejoiced to learn from this court that the operation of the act is not what they have been advised!* However that may be, it is submitted that the *litera* of the prize statute which they have invoked excluded from its operation the picket launch in question, and did not forbid the district court, in 1865 and 1873, to apply a certain *equity* thereof (as above suggested), or at all events gives no title to these claimants to complain

if, after particular consideration (evidenced by the *amendment* of the decree spread out in the petition, Exhibit A, p. 4), the court did. Any error which it may have committed was not against any legal interest of theirs.

And although such consideration is not altogether of the quality of that just adduced, but may even seem to savor of *objecting* the very matter *cujus dissolutio petitur*, it may be pertinent to say that during *prize times* as it were, whilst everybody's attention to such things was *excited*, for a period of ten years or more this ruling went unquestioned by the officers of the Navy now claimants, and that seven years after it was first made, having been presented to Congress in the course of an application for further relief, was virtually approved by that body. (See Appendix, act of 1872.)

The bearing of this suggestion is not by way of estoppel, or to prevent investigation on the footing (as said above) even of an original question, but to reproduce the *professional* atmosphere and connection in which that question was first *and best* considered, one in which what in ordinary times are inconsiderable circumstances were treated as, and were, *of the substance; ex. gr.*, "ships carrying books," and *craft not carrying books;*—and many other like things there be. The rust of peace hides or eats up such points speedily.

To make out title as a sharer in prize-money earned by a certain vessel one must show something more than that he was doing duty thereupon at the time of capture. He must show himself technically "on board"; that is

attached thereto according to law. If so attached it makes no difference that he was absent therefrom upon duty at the time of capture. This is according to the reason of the thing no less than according to express statute. *Volunteering* to go on another vessel upon an enterprise like that against the Albemarle, unless accompanied by a technical displacement from the vessel to which the claimant belonged at the time of volunteering, gives no title to share in prize-money earned during such enterprise. The claimant here, *ex. gr.*, must have lost legal connection with the Otsego, and have become formally a part of the "manning" of Picket Launch No. 1. But the latter, being of that sort of a vessel which carries no *books*, such transplacement could not be effected. This shows the force of the expression "borne on the books."

In this connection the circumstance is not overlooked that in *finding* 4 a list is *entitled* as, one of persons described thereby as "*on board* said launch at the time of the *capture*." If there be enough in the situation of this phrase to show that the words "on board" are used there technically and not in ordinary parlance (as to which some doubt is *felt*, which need not, however, be *insisted upon*), the obvious reply to such suggestion is that the same *finding* states formally that these persons were not "on board" under the title necessary to authorize them to object to the decrees of 1865 and 1873. For that, as is repeated, they must have been "on board" *by book title.*

Their being "on board" for some purposes might avoid the formal objections made in the English cases cited below, but does not satisfy the principle involved in those

objections, which is that *these claimants must deduce the very sort of title required by law.*

There can be no equity against an express positive provision like this in a prize statute.

For all purposes of section 10 the *manning by the United States* of section 32 is limited to such *manning by "books."*

The right to prize-money is too important to depend upon *pro tempore* volunteering on particular ships, temporary assignments thereto by commanders, or any other casual action which may injure *the ordinary interests which those technically connected therewith have in the chances of such vessel to take a prize.* Prize-money is for the gallant sailor a sort of compensation for being excluded from pecuniary rewards such as attend upon money-making professions. Personal interferences therewith as between man and man, by either the allowance or the order of superiors, are therefore, so far as may be, carefully to be prevented. It is a sort of property right. It was *income* under the internal-revenue acts (13 Stat., 140, 480). Of course *chains of title* thereto cannot be required to be as *nice* as in ordinary kinds of property. But some sort of formality, even a very rough one, will prevent a great deal of wanton trespass thereupon.

It is for this purpose that the act of 1864, section 10 (see Appendix), prevents any ill result to this property right by sailors having been sent off on duty, upon the eve of an engagement or otherwise; and in that part thereof which is more particularly under consideration, requires a connection between the capturing vessel and individual claimants thereupon to be established by *books.*

In this association it is further submitted that the case of

Steever, in October, 1864, *was that of one absent on duty from the Otsego; so that if this vessel also had been present at the capture he would have shared* (*under section* 10) *in the prize-money awarded to it.* It makes no difference that the Otsego was in fact absent; Steever was still a part of its complement, and although as a gallant citizen he was present, doing good service (as may be believed) on the launch, technically, *i. e.*, as a naval officer entitled to such and such rates of pay, &c., he was "on board" of his own ship, and participating in *its* chances for prize, *i. e.*, was not to be reckoned "on board" of the launch.

Such seem to be the principles as regards the acquisition, or, so to say, the *purchase* of prize property; wise principles too, inasmuch as they tend to give certainty to *title*, and to exclude the operation of that unbounded license of power (which in time of war must be allowed to military superiors over the *persons* of their inferiors) from cases in which such license serves no public interest.

Two English cases show that these principles are recognized in that country from which we have adopted our prize laws in general. I have not been able to find an American case in point.

In Wemys *v.* Linzee, Douglas, 324, a frigate had upon it as part of its ordinary equipment a lieutenant of marines, but *pro tempore* received on board also a captain of marines and his company. Thereupon a prize having been taken the captain contended that the expression "captain of marines on board," in the proclamation which governed the distribu-

tion of prize-money, applied to *him*. But Lord Mansfield said that it had been solemnly decided that the words "on board" in that connection meant *belonging to the ship*, and that being *corporally on board* was not sufficient. And, after referring to the circumstance that marines *are* not, like seamen, fixed to a particular ship, he added that, at all events, "only the complement sent by the admiralty are entered as belonging to a ship, and that nobody can add to that complement."

In Lumley *v.* Sutton (8 Term Reports, 224), Sutton was captain of the Isis, upon an expedition to the Cape of Good Hope, in 1781. Upon the way the commodore in command put Sutton under arrest, and appointed Lumley to the command. Whilst Lumley was so acting (Sutton remaining on board) prizes were taken. The question, in an action of assumpsit brought under directions from chancery, was, which of the two was *captain on board*, under the proclamation giving prize-money. Lord Kenyon said:

> "The title to prize-money does not depend on the actual exertions of the captain. * * * I agree, according to the case of Wemys *v.* Lingee, that every officer who may be accidentally on board at the time of a capture is not entitled to share the prize-money as such officer; but the person who stands on the ship's books in the situation of captain of the ship, and who is actually on board at the time of the capture, is entitled to the captain's share of the prize-money."

The circumstances of English law under which these cases were decided, and the details of the cases themselves, differ from those before the court. But it is submitted that they are significant of the value of the expression

"borne on the books," and concur with great force to indicate that Congress has not yet declared its general views as to the distribution of prize-money where the individual *captor* claims *through* a vessel with which he is not connected by *books: because* either he did duty as a *volunteer pro tempore* from another ship, and was not transferred to its books, or because he volunteered, as here, upon a vessel not of a grade to have books;—a war "vessel," as is to be gravely remarked, whose alleged *complement* of men (as shown upon the record) at a time when it was proceeding upon a most perilous enterprise, *included one paymaster, but no surgeon!*

If this appears to be the law there can be no reason for not enforcing it. If such conclusion show a casus omissus in legislation, there will be abundant time to supply that before another war; and in the mean time a declaration thereof in this case is in accordance with reason; that is, supposing that a court can pass upon that sort of reason which precedes and inspires legislation. I suppose that to be a well-established source of judicial argument. No doubt that, as is often said, the right to prize-money depends entirely upon statute, and there is no *equity* to be appealed to against statutory provisions upon that subject. But in deciding what those provisions are the antecedent "reason of the thing" may be speculated upon. It is submitted that such "reason of the thing" [in other words, "public policy and the interest of the service," as quoted in the case of Banda, &c., Booty; L. R., 1 Adm., &c., 250] is not obscure as regards the general grounds and principles upon which prize-money should be distributed, and indeed as matter of history *has been* distributed, both in

England and America; and that such reason revolts against interpreting doubtful statutory words so as to substitute the result arrived at in the present case below for that "heretofore reached by the district court,"—"revolts against" that, and per contra will be gratified if those who have "taken the sword" of the statutory letter against the former distribution to Cushing, shall here also in the event experience the truth of the old adage; such *letter* being in effect nothing less than the whole wording of the act, two-edged though it be.

Upon the whole therefore, in the prize act Congress was considering and was providing for the subject-matter of prizes taken by vessels the title of whose "men" to participate therein would be discoverable by their "books." The case of vessels carrying no "books" has not yet been provided for. This appears upon the face of the prize act of 1864, and is confirmed by the circumstance that, having before it, in 1872, the question of *a reappraisement and further distribution*, and also presumably the terms of the decree of 1865 in this very case, Congress virtually approved thereof, and subjected such further donation to the same conditions.

In case the court should think it important (in any view that it may take of the record and the true argument by which the above assignment of error is to be supported) to inquire whether the district court of this District had *jurisdiction* of the subject-matter of distributing the prize-money amongst the individual claimants, it is submitted that it did have such jurisdiction.

The learned court below held that the jurisdiction of prize courts is limited to an ascertainment and distribution as amongst capturing *vessels* (where more than one), but that distribution amongst the *men* of any one vessel is by law a function of the Secretaries of the Treasury and Navy.

Upon the contrary, it is submitted that rights to prize-money being under the statute *legal* rights, are to be adjudged like all other such rights, when claimed by persons otherwise in judicio thereabouts,—*i. e.*, by the court before which they stand—and that all allusions in the statutes to a distribution by the Departments is wholly by way *of executing* the respective decrees. In case of privateers that decree is executed by a commissioner of the court; in these cases through the Treasury. This latter method being intended to consolidate public accounts with persons (in the regular naval service) who otherwise have dealings at the Treasury, and therefore may be public debtors in some other connection, &c.

Inasmuch as the Department's dealings might in any event be controlled by mandamus, it would be strange if a court could not *in the first instance* lay down the true rule thereabouts, the general matter being otherwise before it for administration in prize.

As is well known, there is a substantial difference in this respect betwixt Great Britain and the United States.

In Great Britain the rights of individuals to share in prize-money depends upon proclamation by the Crown. These are their "title deeds;" L. R., 1 Adm. 250; as above cited. Prize acts there expressly refer such claims to the terms of some preceding or following proclamation, and require the prize court to order "the proceeds of any sale,"

&c., "to be paid into the Bank of England to the credit of Her Majesty's paymaster-general," &c., "subject to such regulations as may from time to time be made by order in council as to the custody and disposal of money so paid" (27 and 28 Vict., c. 25, s. 29; 104 Stat. at Large, p. 89).

Distribution of prize-money betwixt individuals in Great Britain therefore remains a matter of favor by the Crown up to the time of its actually being accomplished. The courts of that country consequently have no jurisdiction thereof as against the executive, and ordinarily may leave the will of the latter to be enforced by itself.

In the United States *the ordinary written law of the land creates and ascertains such individual rights.*

It is upon constitutional principle, therefore, that the statutes upon prize require the proceeds of prize property to be "deposited with the assistant treasurer of the United States *most accessible to such court, and subject to its order in the cause.* (Revised Statutes, section 4615; so also sections 4623, 4624, 4625.)

To the same effect are such expressions as "*decreed* to the captors," "*adjudged* to the captors," sections 4630 and 4631, and see details of decree in section 4634, which are plainly intended, as is hereby submitted, to dispose of all questions as to right and possession of "the gross proceeds of the prize subject to the order of the court," whether such possession is or is not actually conveyed through the ministry of the Treasury Department. To be subject to the order of a court is, of course, to be within its jurisdiction.

S. F. PHILLIPS,
Solicitor-General.

APPENDIX.

Act of 1872, ch. 76 (April 1).

That the prize case of the rebel iron-clad man-of-war Albemarle shall be taken up and re-examined by the proper United States court, that the captors may obtain an appraisal such as is required by the prize laws of Congress. (13 Stat., 649.)

Act of 1873, ch. 18 (January 8).

To enable the Secretary of the Navy to pay the captors of the rebel ram Albemarle, in accordance with the decree of the district court of the United States for the District of Columbia, two hundred and two thousand nine hundred and twelve dollars and ninety cents. (13 Stat., 405.)

The provisions of the prize act of 1864 (June 30), which seem material here, are as follows: (13 Stat., 306.)

SEC. 32. That in the term "vessels of the Navy," shall be included, for the purposes of this act, all armed vessels officered and manned by the United States, and under the control of the Department of the Navy. (Rev. Stat., sec. 4614.)

SEC. 27. Whenever any captured vessel, arms, munitions, or other material shall be taken for the use of the Government before it comes into the custody of a prize court it shall be surveyed, appraised, and inventoried by persons as competent and impartial as can be obtained, and the survey, appraisement, and inventory shall be sent to the court in which proceedings are to be had; and, if taken afterward, sufficient notice shall first be given to enable the court to

have the property appraised for the protection of the rights of the claimants and captors. In all cases of prize property taken for or appropriated to the use of the Government, the Department for whose use it was or shall be taken or appropriated shall deposit the value thereof with the assistant treasurer of the United States nearest to the place of the session of the court, subject to the order of the court in the cause. (Rev. Stat., sec. 4624.)

SEC. 10. * * * All prize-money adjudged to the captors shall be distributed in the following proportions, namely:

First. To the commanding officer of a fleet or squadron, one-twentieth part of all prize-money awarded to any vessel or vessels under his immediate command.

Second. To the commanding officer of a division of a fleet or squadron, on duty under the orders of the commander-in-chief of such fleet or squadron, a sum equal to one-fiftieth part of any prize-money awarded to a vessel of such division for a capture made while under his command, such fiftieth part to be deducted from the moiety due to the United States, if there be such moiety, otherwise from the amount awarded to the captors; but such fiftieth part shall not be in addition to any share which may be due to the commander of the division, and which he may elect to receive, as commander of a single ship making or assisting in the capture.

Third. To the fleet captain one hundredth part of all prize-money awarded to any vessel or vessels of the fleet or squadron in which he is serving, except in a case where the capture is made by the vessel on board of which he is serving at the time of such capture; and in such case he shall share, in proportion to his pay, with the other officers and men on board such vessel.

Fourth. To the commander of a single ship, one-tenth part of all the prize-money awarded to the ship under his command, if such ship at the time of the capture was under the command of the commanding officer of a fleet or squadron, or a division, and three-twentieths if his ship was acting independently of such superior officer. [In this paragraph the Rev. Stats. changes "ship" to "vessel."]

Fifth. After the foregoing deductions the residue shall be distributed and proportioned among all others doing duty on board, including the fleet-captain, and borne upon the books of the ship, in proportion to their respective rates of pay in the service. (Rev. Stat., sec. 4631.)

* * * * *

No officer or other person who shall have been temporarily absent on duty from a vessel on the books of which he continued to be borne while so absent, shall be deprived, in consequence of such absence, of any prize-money to which he would otherwise be entitled. And he shall continue to share in the captures of the vessels to which he is attached, until regularly discharged therefrom. (Rev. Stat., Sec. 4633.)

SEC. 9. That in case a decree of condemnation shall be rendered, the court shall consider the claims of all vessels to participate in the proceeds, and for that purpose shall, at as early a stage of the cause as possible, order testimony to be taken tending to show what part should be awarded to the captors, and what vessels are entitled to share; and such testimony may be sworn to before any judge or commissioner of the courts of the United States, consul or commercial agent of the United States, or notary public, or any officer of the Navy highest in rank, reasonably accessible to the deponent. The court shall make a decree

of distribution, determining what vessels are entitled to share in the prize, and whether the prize was of superior, equal, or inferior force to the vessel or vessels making the capture. The decree shall recite the amount of the gross proceeds of the prize subject to the order of the court, and the amount deducted therefrom for costs and expenses, and the amount remaining for distribution, and whether the whole of such residue is to go to the captors, or one-half to the captors, and one-half to the United States. (Rev. Stat., Sec. 4634.)

SEC. 16. The net amount decreed for distribution to the United States, or to vessels of the Navy, shall be ordered by the court to be paid into the Treasury of the United States, to be distributed according to the decree of the court. And the Treasury Department shall credit the Navy Department with each amount received to be distributed to vessels of the Navy; and the persons entitled to share therein shall be severally credited in their accounts with the Navy Department with the amounts to which they are respectively entitled. In case of vessels not of the Navy the distribution shall be made by the court to the several parties entitled thereto, and the amounts decreed to them shall be divided between the owners and the ship's company, according to any written agreement between them, and in the absence of such agreement one-half to the owners and one-half to the ship's company, according to their respective rates of pay on board; and the court may appoint a commissioner to make such distribution, subject to the control of the court, who shall make due return of his doings, with proof of actual payments by him, and who shall receive no other compensation, directly or indirectly, than such as shall be allowed him by the court: *Provided*, That in case of vessels not of the Navy, but controlled by any Department of the

Government, the whole amount decreed to the captors shall be divided among the ship's company. (Rev. Stat., Sec. 4641.)

The prize act in force previously to that of 1864 was the act of 1800 (ch. 33), which conformed to the forms in British statutes by dividing prize-money into certain *fractions*. The operative section was as follows:

SEC. 6. *And be it further enacted*, That the prize-money belonging to the officers and men shall be distributed in the following manner:

1. To the commanding officers of fleets, squadrons, or single ships, three-twentieths, of which the commanding officer of the fleet or squadron shall have one-twentieth, if the prize be taken by a ship or vessel acting under his command, and the commander of single ships two-twentieths; but where the prize is taken by a ship acting independently of such superior officer, the three-twentieths shall belong to her commander.

2. To sea lieutenants, captains of marines, and sailing-masters, two-twentieths; but where there is a captain, without a lieutenant of marines, these officers shall be entitled to two-twentieths and one-third of a twentieth, which third, in such case, shall be deducted from the share of the officers mentioned in article No. 3, of this section.

3. To chaplains, lieutenants of marines, surgeons, pursers, boatswains, gunners, carpenters, and master's mates, two-twentieths.

4. To midshipmen, surgeon's mates, captain's clerks, schoolmasters, boatswain's mates, gunner's mates, carpenter's mates, ship's stewards, sailmakers, masters-at-arms, armorers, cockswains, and coopers, three-twentieths and a half.

5. To gunner's yeomen, boatswain's yeomen, quartermasters, quarter gunners, sailmaker's mates, sergeants and corporals of marines, drummers, fifers, and extra pay petty officers, two twentieths and a half.

6. To seamen, ordinary seamen, marines, and all other persons doing duty on board, seven-twentieths.

7. Whenever one or more public ships or vessels are in sight at the time any one or more ships are taking a prize or prizes, they shall all share equally in the prize or prizes, according to the number of men and guns on board each ship in sight.

No commander of a fleet or squadron shall be entitled to receive any share of prizes taken by vessels not under his immediate command; nor of such prizes as may have been taken by ships or vessels intended to be placed under his command, before they have acted under his immediate orders; nor shall a commander of a fleet or squadron leaving the station where he had the command have any share in the prizes taken by ships left on such station, after he has gone out of the limits of his said command (2 Stat., 52).

113-147

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JAMES H. McKENNEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 1090.

THE UNITED STATES, APPELLANT,

VS.

CHARLES L. STEEVER.

BRIEF FOR THE APPELLEE.

(SUBMITTED UNDER RULE XX.)

BERESFORD, PR.

Supreme Court of the United States.

OCTOBER TERM, 1884.

THE UNITED STATES, APPELLANT,
vs.
CHARLES L. STEEVER. } No. 1,090.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE APPELLEE.

This appeal relates to the proportions in which prize money awarded to a vessel of the United States Navy should be distributed among the officers and crew.

The prize money awarded to the "United States Picket Launch No. 1," for the capture and destruction of the rebel ironclad ram "Albemarle," was distributed as follows:

To the flag officer of the North Atlantic Blockading Squadron, one-twentieth; to the fleet captain, one-hundredth; to the commander of the Division of the Squadron, one-fiftieth.

To the commander of the capturing vessel, a share proportioned to his rate of pay in the Navy—the pay of the rank to which he was promoted subsequent to the capture—instead of the "one-tenth part of all the prize money awarded to the ship under his command."

To two other officers, also promoted after the capture, shares proportioned to the increased pay of their promoted rank.

The remainder was apportioned among the other twelve persons doing duty on the capturing vessel, in proportion to their respective rates of pay at the time of the capture.

Under the provisions of a special act of Congress, approved August 8, 1882, (*Record*, 8 and 17,) the twelve captors who had not received their full and just shares of the prize money, according to the proportions provided in the act of June 30, 1864, filed their petitions in the Court of Claims.

The Court of Claims has given judgments in favor of each of the petitioners for the sum necessary, in addition to the amount already paid, to "make the share of each captor equal to his share of the prize money awarded to 'Picket Launch No. 1,' according to the provisions of the prize laws in force at the time of said capture." (*Record*, 16, 17.) From these judgments the United States has appealed. All the claims depend on the same law and facts, and the appeals pending will be all decided by this case.

STATEMENT OF THE CASE.

The ram "Albemarle" was captured and sunk on the 27th October, 1864, by the "United States Picket Launch No. 1," an armed torpedo launch, propelled by steam, and attached to a division of the North Atlantic Blockading Squadron, known as the Division of the Sounds. The capturing vessel was commanded by Lieut. William B. Cushing, of the United States Navy, and had a crew of fourteen other officers and men. (Findings of Fact I to V, *Record*, 12, 13.)

In the spring and summer of 1864, the "Albemarle" inflicted great damage on a number of the vessels of the North Atlantic Blockading Squadron, and defeated all attempts to capture or destroy her. Lieut. William B. Cushing proposed a scheme for the destruction of one of the enemy's ironclads, which met the approval of the Navy Department. What the proposed scheme was does not clearly appear; but, on the 28th of July, 1864, he was ordered to report to Rear Admiral Gregory, at New York, who would assist him "in the purchase of a suitable tug and India-rubber boat." (Court of Claims Record, 94.)

Six steam picket boats were then under construction at New York for the Navy Department, and two of these were prepared for Lieut. Cushing. A torpedo, possessing extraordinary power, the invention of Chief Engineer W. W. Wood, was "arranged and applied to the picket boats at the suggestion and under the direction of Rear Admiral Gregory and his able assistants." When completed and supplied with guns and ammunition, they were officered and manned from the Navy Yard and U. S. Receiving Ship "Vermont," at Brooklyn. Third Assistant Engineer William Stotesbury was ordered by the Secretary of the Navy to "remain attached to the picket boat to which Rear Admiral Paulding had assigned" him. (Ct. Claims Record, 118.)

The two boats, Nos. 1 and 2, were given in charge to Lieut. W. B. Cushing, completely fitted, about the 20th of September, who sent them, "in charge of their officers," through the canals to Chesapeake Bay—going himself, by permission of the Navy Department, by the land route. (Ct. Claims Rec., 115.) In the Delaware river, Fireman Samuel Higgins was transferred to the crew of "Picket Launch No. 1," from the U. S. Receiving Ship "Princeton," at Philadelphia. Both vessels left Baltimore for Hampton Roads on the 4th of October, 1864, but No. 2 was lost on the way, about the 18th.

Lieut. Cushing was at this time detached from the command of the U. S. Ship "Monticello," by order of the Secretary of the Navy, and ordered to report to Rear Admiral Porter, who assigned him to the command of "Picket Launch No. 1." (Findings of Fact II and III, *Record*, 12.)

Cushing arrived in the Albemarle Sound on the 25th of October, and reported, according to his orders from Admiral Porter, to Commander Wm. H. Macomb, who then commanded a division

of the North Atlantic Blockading Squadron known as the Division of the Sounds of North Carolina. At this time the crew of Cushing's vessel consisted of—

Lieut. Wm. B. Cushing, Commander;
Acting Master's Mate Wm. L. Howarth;
Third Asst. Engineer William Stotesbury;
Fireman Samuel Higgins;
Landsman Lorenzo Deming;
" Henry Wilkes;
" Robert H. King.

To these seven, Commander Macomb, under the instructions of Admiral Porter, added the following eight officers and men from vessels under his command, viz:

Act. Asst. Paymaster Francis H. Swan, of the "Otsego;"
Acting 3d Asst. Engineer Charles L. Steever, of the "Otsego;"
Acting Master's Mate John Woodman, of the "Com. Hull;"
Acting Master's Mate Thomas S. Gay, of the "Otsego;"
Coal-heaver Richard Hamilton, of the "Shamrock;"
Ordinary Seaman Edward J. Houghton, of the "Chickopee;"
" " William Smith, of the "Chickopee;"
" " Bernard Harley, of the "Chickopee."

(Ct. Claims Record, pp. 26, 27.)

Commander Macomb also sent the cutter of his own ship, the "Shamrock," with thirteen officers and men, in tow of Cushing's vessel, but these were cast off before the attack on the ram, and returned to their vessel without participating in the capture.

In making the attack upon the "Albemarle," Lieut. Cushing had to force his vessel over a pen of logs by which the ram was surrounded, under a severe fire of musketry and cannon shot from the land as well as the ram. After the explosion of his torpedo, his own vessel was found to be disabled, either by a shot from the enemy, or by being filled with water thrown out by the action of the torpedo. It is not known what finally became of the attacking vessel and her books and papers. (C. C. Record, 20.)

Cushing and one seaman (Houghton) escaped by swimming. Woodman, the pilot, was drowned. Higgins, the fireman, was killed. Paymaster Swan was wounded; and he, and all the rest of the crew, were made prisoners of war by the rebel forces on the adjoining land. They remained in prison until the following February. Landsman Deming died in prison.

Commander Macomb, on receiving information from Lieut. Cushing that the ram had been sunk, sent him to Admiral Porter to make his official report, and proceeded himself, with the vessels of his command, to the recapture of Plymouth.

The ram was stripped of her armament, stores and equipment, and the property applied to public use, before appraisement. In the following spring, the hull and engines were raised and towed to Norfolk, and, after being appraised, taken into the naval service.

On the 21st of July, 1865, the Secretary of the Navy trans-

mitted the official reports relating to the capture and appraisement to the United States District Attorney at Washington, and requested him to institute prize proceedings. The appraised value, $79,944, was deposited with the assistant treasurer.

The District Court of the United States for the District of Columbia, due deliberation being had in the premises, on motion of the district attorney, adjudged and decreed that the ram "be condemned and forfeited to the United States, on the ground that said captured property is lawful prize of war." The prize commissioners were directed to "proceed, under the requisite evidence taken and reported to the court, to the end that a final decree may be made herein, determining what public ships of the United States are entitled to share in the prize, and whether the prize was of superior, equal or inferior force to the vessel or vessels making the capture." (C. C. Record, 27.)

A decree of distribution was then made, (set forth in Finding VII of the Court of Claims, *Record*, 13,) directing the payment of costs, and that the sum remaining for distribution, $77,298.78, "be deposited in the Treasury of the United States, and be distributed according to law." The same decree, considering "the papers filed in said cause, under the seal of the Navy Department, and the affidavit in behalf of the captors, show what public ship is entitled to share in the said prize, and whether said prize was of superior, equal, or inferior force to the vessel making the capture, and there being no conflicting claim," "adjudged and decreed that the prize was of superior force to the vessel making the capture, and that the whole of the residue of said valuation be paid to the captors."

On the 1st of April, 1872, Congress enacted "that the prize cause of the rebel ironclad man-of-war Albemarle shall be taken up and reëxamined by the proper United States Court, that the captors may obtain an appraisal such as is required by the prize laws of Congress."

The cause was reinstated on the docket of the District Court, on motion of William B. Cushing, in behalf of himself and other captors, and appraisers appointed. They reported that the actual value of the captured property appropriated to public use amounted to $282,856.90.

The court ratified and confirmed the report of the appraisers on the 9th of July, 1872, and ordered the sum of $202,912.90, the difference between the new and the former valuation, to be deposited with the Assistant Treasurer of the United States. (C. C. R., 35.)

There seems to have been then no money under the control of the Secretary of the Navy from which to make this deposit. But in the act making appropriations to supply deficiencies, approved January 8, 1873, Congress appropriated as follows:

"*Rebel Ram Albemarle.*—To enable the Secretary of the Navy to pay the captors of the rebel ram Albemarle, in accordance

with the decree of the District Court of the United States for the District of Columbia, $202,912.90." (C. C. Rec., 44.)

The Secretary of the Navy notified the court that he had deposited this sum with the Assistant Treasurer, and the prize court then proceeded to a final decree. This decree was entered on the 11th of February, 1873.

In this decree, as also in that of August, 1865, the prize court assumed to direct the proportions in which the prize money should be distributed among the individuals entitled to share. The particular shares for the flag officer, the fleet captain and division commander, were ordered to be paid in the proportions designated by the first, second and third clauses of the tenth section of the prize act, and the remainder to be "distributed to the (other) persons doing duty on the torpedo launch in proportion to their respective rates of pay in the service."

No mention is made of the share designated by the fourth clause of the tenth section for the commanding officer of the capturing ship.

The prize money was deposited in the Treasury of the United States, as required by law, and carried to the credit of the general prize fund—the permanent appropriation for the payment of "prize to captors"—under the control of the Navy Department; but the persons entitled to share therein were not, as directed by the 16th section of the prize act, "severally credited in their accounts with the Navy Department with the amounts to which they were respectively entitled."

Lieutenant Cushing, the commander of the capturing vessel, was credited as if entitled to share according to the pay of his rank in the Navy—the increased pay of a Lieutenant Commander, in fact; Acting Master's Mate Howarth was credited with a share according to the pay of a Master, and Acting Master's Mate Gay, according to the pay of an Ensign.

These three officers had been promoted to the higher grades several months after the capture, but before the distribution of the prize money. (Findings of Fact VIII, *Record*, 14.)

The excessive shares paid to these three favored officers greatly diminished "the residue" which belonged to the other captors. What remained of their money was proportioned among them according to their pay at the time of the capture.

None of these other captors or their legal representatives were represented in the prize proceedings in the District Court, (Findings XI, *Record*, 16,) and in the distribution of the money none of them were given any statement of the scheme of distribution adopted. They were at the time on distant stations in the naval service, or at their homes in different parts of the country; some were dead. They had no means of knowing what was due them, or whether their money had been fairly apportioned, not being informed of the amount of the proceeds of the captured property, the costs of litigation, and the rank and rate of pay of each indi-

vidual entitled to share. They were compelled to rely upon the integrity and fairness of the officers of the Government whose duty it was to make a just statement of their accounts with the Navy Department.

The heirs of Samuel Higgins were not informed of the amount allotted to them in 1865, until February, 1873, and did not receive their part of the first distribution until then. The investigation of the scheme of distribution made in their behalf led to the discovery of the favor shown to the three officers, and the wrong done to all the other captors. Prompt application was made to the accounting officers and the Secretary of the Navy for a correction. The wrong was not denied, but the executive officers alleged that they had no power to repair it.

They applied to the District Court for relief, but the jurisdiction of that Court was denied by the "Attorney of the United States for the District of Columbia, appearing by the direction of the Secretaries of the Treasury and of the Navy." (C. C. Rec., 47 to 52.)

Congress, after careful consideration, and having the facts before it, as may be seen from the several reports made to the House of Representatives by its Committee on Naval Affairs, and to the Senate by its Committee on the Judiciary, referred the claims of the captors to the Court of Claims, with jurisdiction and authority to determine whether each captor had or had not received his "full and just share of the prize money awarded for the capture of the said ram 'Albemarle,' *according to the proportions* provided in the prize laws in force at the time of said capture."

The Court of Claims, after a patient and exhaustive examination of the facts and law, finds the facts to be, substantially:

1. At the time of the capture of the ram, the fleet officers of the North Atlantic Blockading Squadron, were Rear Admiral Porter, Commander Wm. H. Macomb, and Lieut. Commander K. Randolph Breese.

2. Lieut. William B. Cushing was detached from the command of the "Monticello," by order of the Secretary of the Navy, in October, 1864, and ordered to report to Rear Admiral Porter for such duty as he might assign him in the squadron.

3. That Cushing was assigned by Admiral Porter to the command of "United States Picket Launch No. 1," an armed torpedo launch, propelled by steam and attached to the squadron.

4. The names and rank and rate of pay of each person on board the vessel at the time of the capture. "It does not appear that said Picket Launch No. 1, had any books."

5. That the ironclad ram "Albemarle" was captured and sunk by said "Picket Launch No. 1," on the 27th of October, 1864.

6. That the ram was afterwards appropriated to the use of the United States, and the appraised value deposited with the Assistant Treasurer by the Secretary of the Navy.

7. That prize proceedings were instituted, and the net pro-

ceeds of the captured property ordered to be deposited in the Treasury of the United States for distribution. (The decree is set out in full.)

8. That Lieut. Cushing and Acting Masters' Mates Howarth and Gay, three of the officers of said "Picket Launch No. 1," had been promoted to higher grades subsequent to the capture, but to take rank from October 27, 1864.

9. That the prize cause was reëxamined by the District Court, under authority of an act of Congress approved April 1, 1872, and a new appraisemnt made and ratified, and that the difference between the new and former valuation had been deposited with the Assistant Treasurer by the Secretary of the Navy.

10. That the court made a farther decree of distribution,—given in full in this finding. (*Record*, p. 15.)

11. That there was no appearance in the prize proceedings on behalf of any of the captors, except Cushing.

12. That, of the total appraised value of the captured ram, there remained for distribution among the officers and crew of the capturing vessel, after deducting the shares of the fleet officers, the sum of $251,284.29. That this sum had been distributed by the Treasury Department in two payments, under the decrees of August, 1865, and February, 1873. That Cushing, Howarth and Gay had been paid, by order of the Secretary of the Navy, in proportion to the rates of pay of the grades to which they were promoted after the capture, and the other officers and crew, or their legal representatives, in proportion to the respective rates of pay to which they were by law entitled on the day of capture. (The aggregate amounts paid to each of the officers and crew are set out in the Finding.)

The court concludes that the captors, to make the share of each equal to his share of the prize money awarded to "Picket Launch No. 1," according to the provisions of the prize laws in force at the time of capture, were entitled to recover the following sums, respectively:

Francis H. Swan,	$14,691 00
Wm. Stotesbury's administrator,	11,301 00
Charles L. Steever,	11,301 00
John Woodman's administrator,	5,424 48
Samuel Higgins' administrator,	4,068 35
Richard Hamilton's administrator,	2,712 23
Edward J. Houghton's administrator,	2,169 79
Bernard Harley,	2,169 79
Daniel C. George,	2,169 79
Robert H. King's administrator,	1,900 22
Henry Wilkes,	1,900 22
Lorenzo Deming's administrator,	1,900 21
	61,708 38

In the findings of facts and conclusions of law, the Court of Claims was unanimous; except that one of the judges thought that the provision of the fourth clause of the tenth section of the prize act, which fixes the share of the commanding officer of a capturing vessel at one-tenth part of the prize money awarded to the ship under his command, should be construed as conferring a privilege and not imposing a restriction, and that the commanding officer, as such, should be allowed to waive his privilege under the fourth subdivision of the tenth section of the statute and take a proportion of the residue under the fifth subdivision.

ARGUMENT.

Where a law is plain and unambiguous, whether it be expressed in general or limited terms, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction.

United States v. *Fisher*, 2 Cranch, 399.

The law on which the appellee bases his claim is plain and unambiguous. We must give it its natural and obvious meaning, and thus interpreted it leaves the appellant no ground to stand upon.

Temple's Case, 105 U. S., 97.

The provisions of the prize law in relation to the distribution of prize money are plain and admit of no doubt in their application.

III Opinions Attorney General, 451.

All the prize laws enacted by Congress since the acts of March 2, 1799, (1 Stats., 715,) and April 23, 1800, (2 Stats., 52,) down to the present time, have set apart three-twentieths of prize money awarded to captors as the fixed shares of the flag officer and commander of the capturing ship. This provision has been very frequently re-enacted, with various changes of the phraseology, but without change of these fixed proportions. The commanding officer is given an absolute right by the statute to his one-tenth (or three-twentieths) of the prize money, and cannot be deprived of it, even if temporarily absent from his ship when the capture is made. He cannot be required to take a share according to his rate of pay, under any circumstances, nor can he claim for himself the share which the law gives to others entitled to participate in the capture.

Section 10, Act June 30, 1864.
Decatur v. *Chew*, 1 Gallison, 506.
Wilkes' Case, XI Opinions Att. Gen., 9.

To give to the commander of a capturing ship a greater proportion of the prize money than the one-tenth (or three-twentieths), would take from the other persons entitled to share "the residue," the rights granted to them by the sovereign power, and substitute for the provisions of the statute, an arbitrary individual will, in derogation of their vested rights, "rights based upon antecedent facts, which amount substantially to an executed contract with the government." (XI Opinions Attorney General, 102.) The rights of the captors rest on the laws which the legislature has enacted on the subject. No beneficial interest can pass to them

beyond the terms of the grants which have been made by Congress, and, on the other hand, no abridgment of their rights, unauthorized by the laws can be of validity. "The doctrine of reasonable or equitable reward has no place in an inquiry as to the distribution of prize money to national vessels under the statute."

The Brig Joseph, 1 Gallison, 545.
The Anglia, Bl. Prize Cases, 566.
The Atlanta, 3 Wallace, 425.

Seventeen-twentieths of the prize money has always been given by the laws to the officers and men of the capturing ship—the distribution being sometimes according to a classification, but latterly according to the rate of pay of all persons, except the commander. Congress, in its numerous prize enactments, public and private, has directed the observance of the system of distribution provided by the general law; and when, in its judgment, a greater sum than his lawful proportion of the prize money was merited by the gallantry of a superior officer, it did not take from the other captors any portion of their money to reward such superior merit, but ordered the payment of an additional sum out of the public money in the Treasury. See Act April 18, 1814, (3 Stats., 130,) granting $5,000 extra to Capt. Oliver H. Perry, of the "Lawrence."

The tenth section of the act of June 30, 1864, provides special shares for the division commander and the fleet captain; but when the latter is serving on a ship making or assisting in the capture, he can only share according to his pay. The division commander, when his own ship participates in the capture, may elect to take his tenth of the amount awarded to his ship, instead of the one-fiftieth otherwise provided for him. But he cannot have both shares. He is the only captor who may waive his privilege, and take either one of the two proportions to which he is restricted.

The right to these specific shares for the fleet officers and commander of the ship being conferred by the statute, the prize court had no power or authority to grant or withhold them—it can neither augment or diminish their amount. It can have no power, by augmenting them, to diminish "the residue" expressly granted by the same statute to "all others doing duty on board;" nor to include among these "others" the commander of the ship, who is excluded *ex vi termini*.

These "others" are entitled to have the residue distributed and proportioned among them in proportion to their respective rates of pay in the service at the time of capture.

It will not be contended, I assume, that any of the persons entitled to share in the prize money awarded for the capture and destruction of the "Albemarle" were entitled to proportions according to the increased pay of the grades to which they were promoted subsequent to the time when the capture was made.

This could only be given in derogation of the rights of their comrades—rights which became fixed at the moment of capture.

"The rate of pay which each of the captors was in receipt of when the capture was made is the measure of his allowance out of the prize proceeds, not the increased pay resulting from the promotion afterward bestowed upon him."
XV Opinions Attorney General, 63.

The promotion bestowed on some of the officers in this case, though granted to take rank from the day of capture, did not entitle them to the pay of the increased rank from that day. The pay of all promoted officers commences from the date of the signature of an appointment to perform the duty * * * or from the date of the signature of a warrant or commission.
Navy Regulations 1865, par. 1162, (1870, par. 1508.)
IV Opinions Atty. Gen., 123, 318, 348.

The prize court is empowered and directed (section 9) to determine *what vessels* the prize proceeds shall be distributed among, and whether they shall have the whole or only one-half. It is not provided with the means of ascertaining, nor empowered to determine, what proportions of the prize money shall be allotted to each vessel, when the capture has been effected by vessels of the Navy.
It is only when the prize money has been awarded to vessels not of the Navy that the court may appoint a commissioner, subject to its own control, to make the distribution to the several parties entitled. (Section 16.)
The Emma, Bl. Pr. Cases, 607.

The net amount decreed for distribution to the United States or to vessels of the Navy shall be ordered by the court to be paid into the Treasury of the United States (section 16), to be distributed to the *vessels* entitled—or one-half to them and one-half to the naval pension fund—by the accounting officers of the Treasury Department, under the direction of the Secretary of the Navy. The amount to be awarded to each vessel can only be ascertained after a careful computation of the number of men and officers attached to each, and the amount of their pay.

In the Farragut or New Orleans prize cause (22 Wallace, 406,) forty-four vessels of the Navy, of all sizes and ratings, were designated by the decree of the District Court as entitled to share in the prize money; but the court did not attempt to say what amount should go to each vessel, or fix the proportion of any officer. That distribution was left where it lawfully belonged.
So, too, in the cases of the "Stag" and "Charlotte." (Bl. Pr. Cases, 623, 625.) The decrees pronounced by Judge Betts (January 16, 1866, Nos. 18,550, 18,551,) direct that the net proceeds "be deposited in the Treasury and distributed according to law, viz: one-half to the United States and the other half to the United States armed vessels 'Malvern,' 'Maratanza,' 'Wilder-

ness,' 'Nansemond,' 'Picket Launch No. 6,' 'A. D. Vance,' and 'Monticello.'" The proportion due to each vessel was ascertained at the Treasury Department—the largest vessel being awarded $33,866.27, while the smallest, "Picket Launch No. 6," received only $1,535.55.

It is worthy of remark that the "Monticello" participated in this capture, and was awarded $15,874.69. Lieutenant Cushing received the one-tenth of this, $1,587.47, as his lawful share. Had he been compelled to share according to his pay, he would have received only $643.13. The "Picket Launch No. 6" (a vessel similar in size and character to "Picket Launch No. 1," the captor of the "Albemarle,") was given $1,535.55 of the prize money; and her commander, Ensign Calvin L. Wilcox, was paid the one-tenth thereof, $153.55, as his lawful share; while his subordinate, George W. Melville, the engineer on the same vessel, was paid $546.24, and a fireman, James Baty, $163.87, as the shares due them according to their rates of pay. (See Treasury Records of 4th Auditor and 2d Comptroller.)

Under the provisions of the act of March 3, 1849, (9 Stats., 378,) and the 16th section of the act of June 30, 1864, (13 Stats., 311,) the claims of individuals to their several shares of prize money must be adjusted by the accounting officers of the Treasury, in connection with their respective accounts with the Navy Department, and they can only be paid what remains due them after their indebtedness to the Government, if any, has been deducted. The District Court has not been invested with any authority to take cognizance of private claims against the United States, for the purpose either of adjudication or inquiry.

The Cherokee, 2 Sprague, 235.
The Merrimac, Bl. Pr. Cases, 585.

The power of the prize court to determine the shares to be paid to the individuals composing the officers and crew of the capturing ship has been authoritatively denied. In the case of O. H. Berryman against the United States, Chief Justice Gilchrist says: "But the court also made a decree of distribution of the proceeds of the prize. This was clearly not within the jurisdiction of the Court. * * This act (March 3, 1849,) was in force at the time the decree was made, and as the money is to be paid under the direction of the Secretary of the Navy, this provision excludes the idea that it is to be paid according to the decree of the Court."

(Reports Court Claims, No. 47, 1856–'57, page 63.)

Congress afterwards (May 28, 1872, 17 Stats., ch. 232, p. 665.) passed the bill reported by the Court of Claims, and directed the amount appropriated to "be distributed among the officers and crew in such proportions as shall be designated by the Secretary of the Navy, according to the provisions of the sixth section of the act of April 23, 1800."

The question was raised in the court below whether the "Picket Launch No. 1," the captor of the "Albemarle," was a "single ship" within the meaning of the act of Congress. The act awards (section 10,) to the commander of a single ship one-tenth part of all the prize money awarded to the ship under his command. In the Revised Statutes the word "vessel" is substituted in this clause for "ship."

The words ship and vessel have always been regarded as synonymous. The first section of the prize act uses both words: "The commanding officer of any vessel or vessels making a capture shall secure the documents of the ship and cargo." The Navy Regulations uses the words as identical in meaning: The commander-in-chief "will divide his ships into divisions and squadrons;" "he shall keep his vessels in readiness to move;" "allow no one to leave his ship." (Regulations of 1870, page 10, pars. 78, 80, 81.) "When appointed to the command of a vessel he (the commander) shall be furnished with a statement of her condition, * * * and with drawings and plans showing the dimensions of the ship." (Par. 161, *et passim.*)

"Ship is a general term, and in the law is equivalent to vessel."

Benedict's Admiralty, §§ 215, 218.
Burrill's Law Dictionary.
Boardman vs. *The Brig Elizabeth*, 1 Pet. Adm. R., 128, *note.*
Weston vs. *Penniman*, 1 Mason, 306.
The Forrester, Newb., 81.

The 32d section of the prize act declares "that in the term 'vessels of the Navy' shall be included, for the purposes of this act, all armed vessels officered and manned by the United States, and under the control of the Secretary of the Navy." (13 Stats., 325.)

The Court of Claims in this case finds as facts that the "Albemarle" was captured and sunk by the United States "Picket Launch No. 1," an armed torpedo launch, propelled by steam, attached to the North Atlantic Blockading Squadron. That Admiral Porter had assigned Lieut. Cushing to the command of this vessel, after said Cushing had been detached from the command of the U. S. Ship "Monticello," by order of the Secretary of the Navy. (Findings of Fact II, III, V. *Record*, 12, 13.)

We have also seen that this capturing vessel was constructed at New York, under the direction of the Navy Department, and provided with arms and ammunition, including a torpedo possessing extraordinary power. She was officered and manned from the Navy Yard and U. S. receiving ships "Vermont" and "Princeton," at New York and Philadelphia, and dispatched, "in charge of her officers," from New York, through the canals to Chesapeake Bay and Hampton Roads, the station of the North Atlantic Blockading Squadron. The commander of that squadron assigned Lieut. Cushing to her command, and ordered him to report to Commander Macomb in the Albemarle Sound. Macomb

transferred from other vessels under his command a number of additional officers and men to the proper crew of the launch under Cushing's command.

It has not been shown, or even suggested, that this vessel was attached to, or an appendage of, any other ship or vessel of the Navy. Her commander, Cushing, was then attached to no other vessel, and received his orders direct from the general officers of the squadron and division of which his "single ship" formed a part. She had her own organized crew—a commander, a paymaster (acting as aid to the commander), two third assistant engineers, three master's mates, a first-class fireman, a coal-heaver, three ordinary seaman and three landsmen—a full complement of all the necessary grades. The landsmen had enlisted in the naval service on the 8th, 10th and 13th September, 1864, and were transferred to this vessel on the 21st September, as shown by the muster-rolls of the receiving ship "Vermont." It was their first service in the Navy. The fireman had served one term, and re-enlisted on the 3d September, 1864. He was transferred to the Picket Launch on the 30th September from the receiving ship "Princeton." Engineer Stotesbury received his appointment in the Navy on the 7th September, at New York, and he was at once assigned to this vessel, with the approval of the Secretary of the Navy. Not one of these belonged to any other vessel.

The Navy Register for 1865, in the list of "Vessels of the United States Navy captured, destroyed, sold, &c.," records this as a "Torpedo Boat, steamer, October 27, 1864, sunk in destroying rebel ram." (Page 296.) The same Navy Register contains (page 283) a "List of Vessels of the United States Navy," some of which were of less than twenty tons in size.

All the facts prove this "Picket Launch No. 1" to be as fairly entitled to be considered a "single ship" as any other "vessel of the Navy." The service she rendered entitled her to be ranked among the most efficient of the ships of the squadron of which she formed a part.

The prize court, in the exercise of its jurisdiction, decreed her to be a "public ship," and entitled to the whole of the prize proceeds.

The Secretary of the Navy and the accounting officers of the Treasury, the commander of the capturing vessel concurring, recognized and allowed the shares provided by law for the flag officer, fleet captain and division commander, shares to which they would have had no claim if the prize had not been captured by "any vessel or vessels under their immediate command."

In the trial below the defendant asked the Court of Claims to find as follows:

VI, VII.

The names of the persons on board the picket-boat at the time of the capture, the rank held by them at the time, the pay they were receiving, and the men-of-war of

the United States Navy to which they were attached and on whose rolls they were borne, appear in the following table (pp. 97, 98):

Name and Rank.	Pay.	Vessels.
William B. Cushing, lieutenant	$1,875	Monticello.
Francis H. Swan, acting assistant paymaster	1,300	Otsego
Charles L. Steever, third assistant engineer	1,000	Otsego.
William Stotesbury, third assistant engineer	1,000	
William L. Howarth, acting master's mate	480	Shamrock.
Thomas S. Gay, acting master's mate	480	Otsego.
John Woodman, acting master's mate	480	Commodore Hull.
Samuel Higgins, first-class fireman	310	Princeton.
Richard Hamilton, coal heaver	240	Shamrock.
William Smith, ordinary seaman	192	Chickopee.
Bernard Harley, ordinary seaman	192	Chickopee.
Edward T. Houghton, ordinary seaman	192	Chickopee.
Lorenzo Deming, landsman	168	Vermont.
Henry Wilkes, landsman	168	Vermont.
Robert H. King, landsman	168	Vermont.

And the picket boat making the capture had no books, the officers and men being there by assignment to temporary duty (pp. 93, 94).

The last payment preceding the 27th October, 1864, to Higgins, Steever & Gay was on the 30th September, and to Deming, Wilkes & King on the 21st September; for the pay which accrued to them up to and including the 27th October, 1864, settlement was subsequently made at the Treasury Department (p. 97).

This was not granted, but the Court finds (IV) that the persons named were the officers and crew on board said launch at the time of capture. It could not find that Lieut. Cushing was "borne on the rolls" of the "Monticello," when it had before it the order of the Secretary of the Navy detaching him from the command of that vessel; nor that the men transferred to the launch from the Receiving Ships at New York and Philadelphia, were still borne on the rolls of those vessels, when it had in evidence transcripts from the muster and pay rolls ofboth the "Vermont" and "Princeton," officially recording that they had been, on the 21st September, "transferred to Picket Boats Nos. 1 and 2."

So with all the other officers and men; they had been transferred by competent authority from other vessels of Macomb's division, and no attempt was made to prove that they were still borne on the rolls of those vessels. There was no evidence tending to prove that their transfer was merely temporary. There is no finding to support such an assumption. The official rolls themselves are in possession of the defendant, and they could have been produced. They were not. On the contrary, the official Navy Register, January 1, 1865, records the names of Howarth, Stotesbury, Steever and Swan as "Prisoners of War," (pp. 161, 180, 207,) and not as borne on the rolls of any vessel or station.

The men were also prisoners. When they were transferred to Cushing's command, they were paid on their own ships to the

28th October. On that day they were made prisoners, and held as such until the following February.

Could they answer muster and roll calls on ships of the U. S. Navy from their dungeons in the Danville and Libby prisons? Was their answer borne over the ocean by genial southern breezes in midwinter, and duly entered on the rolls of "the men-of-war of the United States Navy?" The spirits of the dead Wordman and Higgins might have been called from the vasty deep; but did they come?

When the surviving officers and men of the picket launch returned from prison they were not sent back to their former ships, for payment on the rolls of those vessels, but their accounts were settled by the Fourth Auditor, here in Washington city. (C. C. Rec., 65, 97.)

In the same Finding IV, the court below says: "It does not appear that said picket launch had any books." It was asked to find, positively, that "the picket boat making the capture had *no* books." (C. C. Rec., 102.)

It cannot be told with certainty what books and papers were kept on the launch. She was disabled in the attack, and her books and papers, everything on board, were lost. Her officers and crew, except Cushing and one seaman, were killed or made prisoners. Cushing and Howarth, the officers who were connected with the vessel from the beginning of her career until her end, and whose duty it was to keep the books, are both dead. We know that Howarth, who brought the launch from New York through the canals to Chesapeake Bay and Hampton Roads, says of himself, in a letter to the Secretary of the Navy, dated December 13th, (1865,) that he was "at that time (the time of capture) on board the picket boat and doing the duty of an acting ensign, though rating *on the vessel's books* as acting master's mate." (C. C. R. 113, 114.)

The law makes it the duty of the commanding officer of a vessel to cause an entry to be made in the books of every man received on board his ship, and to make out his descriptive list, &c., when he is transferred, (Revised Stats., Sec. 1624, Art. 20,) and the same section (Art. 15) makes it his duty to transmit to the Navy Department a complete list of the officers and men of his vessel entitled to share in prize money. It is but justice to Cushing's memory to suppose that he did not neglect this duty. We know with certainty that, after the capture, he gave to Commander Macomb a full list of all the men who coöperated with him in the capture of the ram, showing the rank and rating of each, (C. C. R., 27,) and afterwards approved a list of the same names as those of the persons entitled to share in the prize money awarded to his vessel.

But even if books were not made, as required by law, the subordinates, for that reason, cannot be held to have lost the rights which the law gives them to their shares in the prize money. Their rights are not based on the fact of their names being en-

tered in books. This is but one of the evidences that they are the persons entitled. Their rights are based upon the fact of their *doing duty* on board, and the term "borne on the books" is used to save the rights of those who may be temporarily absent on other duty at the time of capture, and to exclude persons who may chance to be on board, as mere passengers or spectators, having no *duty* to perform as part of the ship's company.

But the commander of the capturing ship cannot claim for himself, in excess of the share which the law gives him, a portion of the residue which belongs to the men, on the ground that he did not make the books which the law requires. The owners of a private armed vessel claimed, in addition to their moiety, that they were also entitled to the shares of some of the crew, because no shares had been set against the names of these in the shipping list. Justice Story held that the officers and crew had a vested interest; if the quantity of this interest be not ascertained by the written agreement of the parties, it is ascertained by the law.

The Dash, 1 Mason, 4.

The 32d section of the prize act, defining what is meant by vessels of the Navy, includes "all armed vessels, officered and manned by the United States, and under the control of the Navy Department." This does not require "books." Organization is implied, but organization does not depend for its existence on a written record thereof in books to be kept on board the ship. In this case the vessel, the arms, the men of the United States, and control of the Navy Department, and the organization, have all been established beyond question.

All on board of the capturing vessel were there *doing duty*—and very effective duty. The right of each to share in the prize proceeds has never been questioned. The only question is the proportion which each may take. The shares of the fleet officers have been allowed and paid in the exact proportions provided by the law—the court, departments and the captors concurring in their allowance. They were allowed and paid because the law gave them—not because these officers were equitably entitled to them for meritorious services.

The law makes no exception in favor of the commander of the capturing ship. His share is also a fixed legal proportion, without reference to any super-eminent merit he may be supposed to possess. He is entitled to this fixed proportion, even if he should be absent from the ship, temporarily, when the capture is made. "The residue" belongs by equal right to all *others* doing duty on board—and the commander has no interest in it further than to see that each of his men shall get the share proportioned to his rate of pay. (Articles 15, 20, Rev. Stats., Sec. 1,624.)

But, even if it should be contended that the money awarded was not prize money, but bounty granted for the destruction of an

enemy's vessel of war, it would not affect the rule of distribution, as the law (Section 11,) requires that "all ransom money, salvage, bounty, or proceeds of condemned property, accruing or awarded to any vessel of the Navy, shall be distributed and paid to the officers and men entitled thereto in the same manner as prize money, under the direction of the Secretary of the Navy."

The prize money awarded in this case was, first, the appraised value of a portion of the captured property taken for the use of the Government, deposited with the Assistant Treasurer of the United States, by the Secretary of the Navy, as required by section 27 of the prize act. Second, the difference between that partial appraisement and the value of the whole property, as ascertained by the District Court, under the authority of an act of Congress specially authorizing the reappraisement. A special appropriation of the amount of this difference was made by Congress "to enable the Secretary of the Navy to pay the captors of the rebel ram Albemarle in accordance with the decree of the District Court of the United States for the District of Columbia."

The act making this appropriation was approved January 8, 1873, and the decree of the District Court referred to is doubtless that of July 9, 1872, confirming the report of the appraisers, and ordering the deposit with the Assistant Treasurer of the sum of $202,912.90, the exact sum appropriated by Congress, and placed under the control of the Secretary of the Navy. The final decree of distribution as to this sum, $202,912.90, was not made by the Court until the 11th day of February, 1873.

It cannot be reasonably held that Congress, by mere implication, in a deficiency bill, intended to repeal for the occasion the positive provisions of a statute which had been so often approved by successive Congresses, from 1789 down to the latest edition of the Revised Statutes, and to empower the District Court to make a distribution of the money appropriated in such proportions as it might think proper, without reference to any of the rules laid down in the General Statutes, and without regard to the rights which the captors had acquired under their contract with the Government.

This would be to suppose that Congress intended to take from the Secretary of the Navy and the accounting officers of the Treasury Department, the duty which the Statutes had confided to them, and invest a single judge of a local tribunal with the power to make an *equitable* distribution of the prize money among the captors, according to his judgment of the greater or less merit of each individual. And this without directing or requiring the judge to take any evidence, or make any investigation, by which he might inform himself whether a claim to superior merit on the part of any one or more of the captors had any foundation in fact. If the Court had been empowered to make such equitable distribution, and award to any one of the captors an extra proportion, it would have been but fair to have given to all inter-

ested at least a hearing before decreeing that some of them merited less than the proportion which the law, under which they acted, had promised them, and that their shares should be diminished in order to augment that of their commander.

No—had Congress intended that Cushing should receive, in addition to its vote of thanks and the consequent promotion for his gallantry in this action, more than his lawful share of the prize money, and that the other equally brave captors—not one of whom was his inferior in courage and endurance—should have less, it would have said so, in unambiguous words; or it would have granted him an extra sum out of the money in the Treasury, as an earlier Congress granted to Captain Oliver H. Perry for his gallantry in the brilliant naval actions on Lake Erie.

The dissenting opinion does not claim for the prize court a right to decree the proportions in which prize money shall be distributed among the officers and crew of each vessel entitled. On the contrary it seems to agree with the opinion of the court in denying such jurisdiction. It claims for the officer commanding a capturing ship the privilege of waiving his right to the share provided for him by the statute, when such share is less in amount then he would receive if permitted to share according to his pay, and of taking for himself a proportion of the residue which the law gives to the others doing duty on board his ship.

Such a privilege can only be allowed in derogation of the rights which the law has granted to the others doing duty on board the capturing ship.

The special act of August 8, 1882, under which these claims of the captors of the Albemarle were considered by the Court of Claims, directed judgment to be rendered in their favor if the Court should find that either or any of them had not received his full and just share of the prize-money awarded according to the proportions provided in the prize laws in force at the time of the capture, and was entitled to claim and recover the same.

They have established their right to recover by evidence drawn exclusively from the records of the Government itself.

It has not been denied that they were wronged in the distribution that gave to some of the officers increased shares of the prize money because of the promotion of such officers subsequent to the capture.

The Court of Claims has given them judgments for the sums which, in addition to the amounts already paid them, respectively, make the share of each of the captors equal to his share of the

prize money awarded to "Picket Launch, No. 1," according to the provisions of the prize laws in force at the time of the capture.

There was no error in the judgment.

The adjudged cases relating to the distribution of prize money do not cover the exact points of this case; but their analogies support the interpretation contended for by the claimants. The case of Decatur *vs.* Chew, (1 Gallison, 506,) is not wholly dissimilar. The official interpretations of the prize laws by various Attorneys General decidedly sustain our contention. The case of Wilkes, (XI Opinions, 9,) is in point; as well as the opinion of Attorney General Pierrepoint (XV Opinions, 63,) given in this case. None of the English cases reported are applicable.

JAS. FULLERTON,
Counsel for the Captors.

WASHINGTON, D. C., *January 7*, 1885.